

THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ZIMMERI CONTRERAZ, individually,

Plaintiff,

vs.

CITY OF TACOMA, a municipal corporation,
SOUTH SOUND 911, an interlocal agreement
agency; and, CHRISTOPHER BAIN, in his
individual capacity

Defendants.

Case No. 3:22-cv-05106-JNW

PLAINTIFF'S DEPOSITION
DESIGNATIONS OF THE VIDEO
TESTIMONY OF DEFENDANT
CHRISTOPHER BAIN

TRIAL DATE: APRIL 26, 2024

Pursuant to the Court's order on April 1, 2024, the plaintiff designates the following testimony of Defendant Christopher Bain along with filing a copy of the highlighted deposition transcript with designations as originally served on the defendants on March 19, 2024. To date, Plaintiff has received no objections or counter-designations.

Deposition of Defendant Christopher Bain

Deposition Page & Line	OBJECTIONS	Court's Ruling
Pg. 5; l. 17 – Pg. 7, l. 1		
Pg. 7; l. 5 – Pg. 9, l. 23		
Pg. 10; l. 5 – Pg. 14, l. 1		

PLAINTIFF'S DEPOSITION DESIGNATIONS OF
THE VIDEO TESTIMONY OF DEFENDANT
CHRISTOPHER BAIN

Pg. 15, l. 12 – Pg. 16, l. 2		
Pg. 16, ll. 10-25		
Pg. 17, ll. 3-8		
Pg. 17, l. 18 - Pg. 19, l. 21		
Pg. 19, l. 24 – Pg. 20, l. 14		
Pg. 46, ll. 14 – 23		
Pg. 46, l. 25 – Pg. 55, l. 12		
Pg. 55, l. 16 – Pg. 56, l. 6		
Pg. 56, ll. 8-22		
Pg. 57, l. 7 – Pg. 58, l. 4		
Pg. 58, ll. 9 – 21		
Pg. 58, l. 24 – Pg. 60, l. 9		
Pg. 60, ll. 12 - 23		
Pg. 61, ll. 2-22		
Pg. 61, l. 25 – Pg. 62, l. 6		
Pg. 62, l. 25 – Pg. 63, l. 3		
Pg. 63, ll. 6-15		
Pg. 65, l. 17 – Pg. 69, l. 18		
Pg. 69, l. 25 – Pg. 78, l. 16 (Objection on Pg. 70)		

PLAINTIFF'S DEPOSITION DESIGNATIONS OF
THE VIDEO TESTIMONY OF DEFENDANT
CHRISTOPHER BAIN



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Pg. 78, l. 19 – Pg. 80, l. 21		
Pg. 80, l. 24 – Pg. 88, l. 2 (Objections on pgs. 81, 82, 84-87)		
Pg. 88, l. 11 – Pg. 97, l. 3 (Objections on pgs. 89, 91-92, 95-97.		
Pg. 107, l. 25 – Pg. 115, l. 115 (Objections on pgs. 109, 112-115)		
Pg. 116, l. 11 – Pg. 132, l. 7 (Objections on pgs. 117,120-132)		

DATED this 3rd day of April, 2024

COCHRAN DOUGLAS, PLLC

By: /s/ Loren A. Cochran

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Attorneys for Plaintiff

PLAINTIFF’S DEPOSITION DESIGNATIONS OF
THE VIDEO TESTIMONY OF DEFENDANT
CHRISTOPHER BAIN

CERTIFICATE OF SERVICE

I, **Kim Snyder**, hereby declare under penalty of perjury under the laws of the State of Washington and the United States of America that I am employed at Cochran Douglas Law and that on today's date, I served the foregoing via **ECF** and **email**, by directing delivery to the following individuals:

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Attorneys for Defendants City of Tacoma and Christopher Bain

DATED this 3rd day of April, 2024.

/s/ Kim Snyder
Kim Snyder, Legal Assistant

PLAINTIFF'S DEPOSITION DESIGNATIONS OF
THE VIDEO TESTIMONY OF DEFENDANT
CHRISTOPHER BAIN

Deposition of Officer Christopher Bain

Contreraz v. City of Tacoma, et al.

November 14, 2023



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Officer Christopher Bain

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ZIMMERI CONTRERAZ, individually,)
)
Plaintiff,)
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v.) No. 3:22-cv-05106-BHS
)
CITY OF TACOMA, a municipal)
corporation; SOUTH SOUND 911, an)
Interlocal agreement agency; and)
CHRISTOPHER BAIN, in his)
individual capacity,)
)
Defendants.)

VIDEOTAPED VIDEOCONFERENCE DEPOSITION

UPON ORAL EXAMINATION OF
OFFICER CHRISTOPHER BAIN

Taken at 747 Market Street, Room 1120
Tacoma, Washington

DATE TAKEN: NOVEMBER 14, 2023
REPORTED BY: BARBARA CASTROW, RMR, CRR, CCR #2395

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MR. COCHRAN 5

EXHIBIT INDEX
NO. DESCRIPTION PAGE NO.
1 11-page Resolution No. 40622. 14
2 5-page City Council Action Memorandum dated 14
6/25/20.
3 1-page spreadsheet. 21
4 1-page note to Chief Ake from Joel Cheney 44
dated 5/24/21. P/TPD JC 000017.
5 6-page Cad Incident Inquiry. CONTRERAZ 65
000229-234.
6 12-page Tacoma Police Department Use of 90
Force Sub-Section 3.1. CONTRERAZ
000518-529.
7 4-page Tacoma Police Department Incident 98
Report. Incident No. 2019401679.1.
CONTRERAZ 000831-834.
8 2-page Tacoma Police Department Supplemental 99
Report. Incident No. 2019401679.2.
CONTRERAZ 000833-834.
9 1-page Cad Incident Inquiry. CONTRERAZ 111
000235.

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* * * * *

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Tacoma, Washington
November 14, 2023
10:03 a.m.
-oOo-

THE VIDEOGRAPHER: We are now on the record.
The time is 10:03 a.m. on March -- I mean November 14th,
2023. This is the video recorded deposition of Officer
Christopher Bain in the matter of Contreraz versus City
of Tacoma, et al., in the United States District Court
Western District of Washington at Tacoma. The case is
3:22-3 -- no, 3:22-cv-05106-BHS.

My name is Melody Sorenson from Buell Realtime
Reporting.

Will counsel please identify themselves for the
record?

MR. COCHRAN: Yes. For the Plaintiff
Contreraz, Loren Cochran.

MS. COX: For the City of Tacoma, Kimberly
Cox.

MS. TAYLOR: And also present for the City
of Tacoma, Jennifer Taylor.

THE VIDEOGRAPHER: The court reporter today
is Barbara Castrow, who'll now swear in the witness.

///

1 (Pages 1 to 4)

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Officer Christopher Bain

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OFFICER CHRISTOPHER BAIN, witness herein, having been first duly sworn under oath, was examined and testified as follows:

MR. COCHRAN: For the record, South Sound 911 is another defendant in this case. They were served with a copy of the deposition notice. My office did not hear anything from them. I'm assuming the City of Tacoma did not either.

We're going to go ahead and progress without Defendant South Sound 911's representation based on their course and conduct regarding the past several depositions.

EXAMINATION

BY MR. COCHRAN:

Q. With that, sir, would you go ahead and say and spell your last name for the record?

A. Bain, B-a-i-n.

Q. And what's your first name?

A. Christopher.

Q. What's your business address?

A. 37 -- 3701 South Pine Street in Tacoma, Washington.

Q. What business is at 3701 South Pine Street in

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believe.

Q. Before you were a police patrol officer, did you have a prior position with TPD?

A. I did not.

Q. So tell me when you first began at TPD.

A. October of 2008.

Q. So from October of 2008 until 2011, were you a police patrol officer?

A. I was.

Q. And then how long were you in that DUI enforcement unit?

A. I believe a little over a year.

Q. And then did you go back to police patrol officer?

A. I did.

Q. In July of 2020, what was your position with the Tacoma Police Department?

A. A police patrol officer.

Q. If you would for me, and I know this is a lot to ask, but can you describe for me what your understanding of your primary responsibilities were as a police patrol officer with the Tacoma Police Department in July of 2020?

A. I was assigned to the 1 sector, which is primarily downtown, which also includes Northeast

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Tacoma, Washington?

A. It is the headquarters of the Tacoma Police Department.

Q. What's your position with the Tacoma Police Department currently?

A. Traffic enforcement officer.

Q. How long have you been a traffic enforcement officer with TPD?

A. I accepted the position in April of this year.

Q. Prior to being a traffic enforcement officer as of April of this year, what was your prior position with TPD, if any?

A. Police patrol specialist.

Q. What's the difference, as you understand it, between a traffic enforcement officer and a police patrol officer?

A. My primary duties are traffic enforcement and collision investigations as a traffic enforcement officer.

Q. Have you performed in that role in law enforcement at any other time a traffic enforcement officer?

A. For a brief time, I believe in 2011, I was a DUI enforcement officer, which was part of the traffic division, I believe. That was from 2011 to 2012, I

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Tacoma. So I patrol that area, respond to calls as dispatched as needed, patrol the area, conduct traffic stops, person contacts, police enforcement activities in my assigned area.

Q. Did you have a partner that you were regularly with in July of 2020?

A. What -- please describe what you mean by partner.

Q. Well, I'm just using vernacular admittedly from popular culture, but did you have somebody that you were teamed up with on a semi or regular basis who --

A. No, I was normally a one -- a one-officer car.

Q. Did you have a specific unit number or badge number that identified you?

A. Yes. As a swing shift officer, we are Paul units if we're one-officer units, and my badge number and my call sign is 273.

Q. Have you always been -- has your call sign always been 273?

A. Yes, it has.

Q. Before you became a Tacoma police officer, had you worked in law enforcement previously?

A. Yes.

Q. My understanding is that was in Juneau, Alaska; is that right?

2 (Pages 5 to 8)

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1 A. That is correct.

2 Q. How long were you a police officer in Juneau,
3 Alaska?

4 A. I was hired in February -- or January of 2006,
5 and I separated employment in September of 2008.

6 Q. Do you remember what you were hired on as,
7 specifically what your title was with the Juneau Police
8 Department?

9 A. At hire, it was recruit officer. And then once
10 commissioned, it was police officer.

11 Q. Did you go to an academy in Alaska?

12 A. I did.

13 Q. Where is that located?

14 A. Sitka.

15 Q. Did you also ultimately go to the academy here
16 in Burien?

17 A. It was a modified lateral academy.

18 Q. When was that, if you remember?

19 A. I got hired in October of 2008. I do believe
20 it was -- would have been beginning of 2009 once I got
21 through administrative duties and purposes at first
22 hire, so I believe it was the beginning. I couldn't
23 give you the exact month.

24 Q. Let me ask you, are you currently married?

25 A. Yes, I am.

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1 Q. And do you have any kids?

2 A. Yes, I do.

3 Q. How many children do you have?

4 A. Four.

5 Q. With regard to your background, it looked like
6 you got a bachelor's degree from Eastern Washington
7 University; is that right?

8 A. That is correct.

9 Q. Was that in 2005?

10 A. I do believe that is correct.

11 Q. Ever serve in the military?

12 A. No.

13 Q. Past Eastern Washington University's
14 bachelor's, did you take any other or have you taken any
15 other academic courses?

16 A. Yes. I'm about halfway through my master's
17 degree with Southern New Hampshire University.

18 Q. Tell me the name of the university again.

19 A. Southern New Hampshire.

20 Q. When did you start that?

21 A. Sometime during COVID.

22 Q. So 2020, 2021?

23 A. Yes.

24 Q. Is there an emphasis that you are looking to
25 get your master's in?

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1 A. Continuing criminal justice studies, and I
2 haven't decided a specific discipline within criminal
3 justice.

4 Q. And I'm guessing that's online university?

5 A. It is. It would be a long commute if it was
6 not.

7 Q. It would be a heck of a commute.

8 Do you have a certain caseload or credit load
9 that you have to keep every semester or quarter?

10 A. Just one class.

11 Q. Past your modified lateral academy in or about
12 2009, have you had any continuing career education, not
13 academic, but something that's more aligned to
14 continuing law enforcement education other than regular
15 training?

16 A. My specialty is impaired driving and collision
17 investigation. So I've received expert training in drug
18 recognition -- drug recognition training. I'm a
19 certified DRE, drug recognition expert. I'm an
20 instructor in the Draeger breath test machine. I'm a
21 standard field sobriety field instructor. I have basic
22 and advanced collision investigation training.

23 Q. And where did you get that extra training?

24 A. Most of the additional training is either
25 through the department or through the Washington State

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1 Patrol.

2 Q. Is that training that you actually had to go
3 off site to get?

4 A. Yes.

5 Q. Let me ask about some other training you may or
6 may not have had. Have you ever had any training on
7 racial bias in police enforcement?

8 A. Yes, it is part of our required training that
9 we -- we have every year.

10 Q. Okay. When is the first time that you can
11 recall having racial bias in law enforcement or police
12 enforcement training with the Tacoma Police Department?

13 A. To the best of my recollection, I can't give
14 you an exact date. I would say within the last five to
15 ten years.

16 Q. Tell me what you can recall about that
17 training.

18 A. Well, their additional training was within --
19 with in-person instructors in-house, and since then it's
20 been online training. But the bulk of it is recognizing
21 biases within the culture, within the community, within
22 ourselves and how to deal with those biases, recognize
23 them and correct them.

24 Q. And so what does that mean to you when you are
25 being trained on recognizing bias, if anything?

3 (Pages 9 to 12)

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1 A. It means that based on the training that there
2 could be biases that somebody has that they are not
3 aware of. And if it's brought to their attention, that
4 there are ways to recognize those biases and fix them,
5 correct them.

6 **Q. Now, I asked for a list of the training that**
7 **you've undergone, and I don't believe that I saw that**
8 **within your training. Is that something where you are**
9 **actually getting some sort of credits for that?**

10 A. Usually it's -- from my recollection, it would
11 be in our quarterly training. We would have a course or
12 be in our online training. So if it's an online
13 training, I don't know that the department keeps a
14 separate record of that. I just attend the training.
15 It's up to them to keep those records.

16 **Q. Have you been made -- strike that.**
17 **Have you been made aware of a city resolution**
18 **and affirmation to try and recognize and make an**
19 **emphasis on racial bias in law enforcement?**

20 A. Not -- nobody has come to me personally. I try
21 not to pay attention to too many politics either, local
22 or national. I just try to concentrate on the things
23 that affect me and that I can affect. So if there is
24 something within the city, if I haven't received
25 specific training on it, then I have not been made aware

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1 of it.

2 MR. COCHRAN: Let me ask, I'm going to ask
3 our court reporter Barbara to mark these two exhibits.

4 MS. COX: As...?

5 THE COURT REPORTER: 1 and 2.

6 MR. COCHRAN: Exhibits 1 and 2.

7 (Exhibit Nos. 1 and 2 marked.)

8 THE WITNESS: Would you like me to review
9 this?

10 **Q. (By Mr. Cochran) Yeah, in just a minute. I**
11 **want to make sure counsel has a copy before you begin to**
12 **look at it.**

13 And, yes, if you would go ahead and take a look
14 at what's been marked now for identification as Exhibits
15 1 and 2, I will identify them for the record.

16 Exhibit 1 is a copy of Resolution No. 40622.
17 It's a resolution issued by the mayor of the City of
18 Tacoma. There's not a specific date on it. It's my
19 understanding that it was issued in 2020. It's
20 available as a public document from the City of Tacoma.

21 And Exhibit 2 is a city manager's memo or it's
22 to the city manager from the chief policy analyst to the
23 mayor. And this is regarding a resolution affirming the
24 City of Tacoma's commitment to antiracist systems
25 transformation. The date on this is 6/25 of 2020.

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1 And I just want to see if you were made aware
2 of either of these, the resolution or the memo from the
3 city -- to the city manager regarding police -- well, a
4 commitment to antiracist systems transformation.

5 MS. COX: So the objection would be form if
6 that was a question. I'm not sure if you were still
7 narrating the exhibit description or that was a
8 question. But if it's a question, the objection is
9 form.

10 **Q. (By Mr. Cochran) So I will go ahead and ask**
11 **the question.**

12 **Have you been made aware of either Exhibit 1 or**
13 **Exhibit 2 as an employee of the City of Tacoma at any**
14 **time?**

15 A. Exhibit 1 sounds like a broad policy that we
16 were made aware of. We received training. That's -- I
17 believe that's probably where the anti-biased police
18 training probably stemmed from.

19 As far as there being a Resolution 40622, it's
20 the first time I have seen it. And I don't recognize
21 this memo from the city manager.

22 **Q. But you feel like this -- these two memos or at**
23 **least as you've been able to look at them encompass the**
24 **training that you testified that you received regarding**
25 **racial bias --**

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1 MS. COX: Object to form.

2 **Q. (By Mr. Cochran) -- and police enforcement?**

3 MS. COX: Sorry.

4 MR. COCHRAN: That's all right.

5 MS. COX: Objection; form.

6 Are there two memos or two exhibits?

7 MR. COCHRAN: Sorry. Both exhibits.

8 MS. COX: Objection; form still.

9 Go ahead and answer if you can.

10 A. I would say the scope and the purpose of these
11 would encompass the training that we've received, yes.

12 **Q. (By Mr. Cochran) Do you recall if the -- and I**
13 **know you said you didn't know exactly, you thought it**
14 **was within the last five years, but do you remember if**
15 **it was closer to the June of 2020 date that you had some**
16 **sort of racial bias in law enforcement training from**
17 **Tacoma Police Department?**

18 A. Reviewing these documents does not help me
19 narrow down a date.

20 **Q. So tell me this specifically -- when I say**
21 **"this," I mean Resolution No. 40622 and the accompanying**
22 **memorandum, which is Exhibit 2, talks specifically about**
23 **concerns with the black community. Was that a part of**
24 **the racial bias training that you believe you received**
25 **from the City of Tacoma?**

4 (Pages 13 to 16)

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1 MS. COX: Objection; form.
 2 Answer if you can.
 3 A. I do believe it was a part of the training.
 4 **Q. (By Mr. Cochran) From the training, can you**
 5 **identify how you combat, as you were trained, racial**
 6 **bias in law enforcement?**
 7 A. How I combat racial bias that I see or racial
 8 bias that I have? Could you please be more specific?
 9 **Q. Sure. I'm just wondering how based on the**
 10 **training, which you testified was in part to recognize**
 11 **that there are inherent biases, tell me how you have**
 12 **implemented that training to be aware of potential**
 13 **racial biases in law enforcement.**
 14 MS. COX: Objection; form.
 15 Answer if you can.
 16 A. I'm sorry. Could you repeat the question?
 17 **Q. (By Mr. Cochran) Sure.**
 18 **How have you implemented the training you say**
 19 **you received on racial bias in law enforcement to combat**
 20 **any racial bias that you may have?**
 21 A. To the best of my recollection, I haven't been
 22 in a position where I needed to combat any type of
 23 racial biases.
 24 **Q. Have you had to confront any racial biases in**
 25 **your position as a Tacoma Police Department officer?**

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1 A. With the public or with other officers? Could
 2 you be more specific, please?
 3 **Q. In the actual enforcement. So not with other**
 4 **officers, but in any way in enforcement of the laws.**
 5 A. I have -- I've handled a few hate crimes. I
 6 couldn't give you a number or date or instance, a
 7 specific instance, but I have handled hate crime cases.
 8 And as I previously stated, my main area of
 9 patrol was the Sector 1, which is the Hilltop area,
 10 which has a large minority community or is largely a
 11 minority community.
 12 So I've been called by the public many -- many
 13 racial slurs towards myself, and I have witnessed other
 14 officers being called racial slurs including minority
 15 officers. And I have also dealt with the public using
 16 racial slurs and biases towards each other.
 17 **Q. Okay. So what you've confronted on the Hilltop**
 18 **is people saying racial slurs to you?**
 19 A. And to other -- and the other citizens and
 20 other officers as well, yes.
 21 **Q. What kind of racial slurs have you heard while**
 22 **on patrol in the Hilltop?**
 23 A. Specifically I can recall being called a
 24 cracker, a honky, hillbilly. Those are the ones that
 25 just come to -- just come to mind right away.

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1 **Q. Okay. How did that make you feel when you were**
 2 **called a cracker or a honky or a hillbilly?**
 3 A. I don't take offense to it.
 4 **Q. Any other instances you can think of where**
 5 **you've had to at least confront your own racial bias in**
 6 **police enforcement as a Tacoma Police Department**
 7 **officer?**
 8 A. Not to my recollection, no.
 9 **Q. Have you ever felt like you may have an**
 10 **inherent bias based on the color of a person's skin?**
 11 A. No.
 12 **Q. Have you had a chance to read a copy of the**
 13 **lawsuit that was filed by my client Zim Contreraz?**
 14 A. I don't -- I don't believe I have read it in
 15 detail, no.
 16 **Q. Have you read it at all?**
 17 A. Yes, I've skimmed it, but I didn't -- I tend to
 18 get lost in a lot of the legal language.
 19 **Q. Tell me based on your understanding what's --**
 20 **what's the lawsuit consist of with regard to your**
 21 **actions and my client Zim Contreraz?**
 22 MS. COX: And objection; form.
 23 Answer if you can.
 24 A. From my understanding, the lawsuit is alleging
 25 that I used excessive force when contact -- physically

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1 contacting Mr. Contreraz and pulled him back hard and
 2 slammed him down on the picnic table.
 3 **Q. (By Mr. Cochran) Did you notice anything about**
 4 **the lawsuit also alleging racial discrimination based on**
 5 **Mr. Contreraz's skin color?**
 6 A. I don't recall reading that. I may have
 7 skimmed over it or I just don't recall reading it.
 8 **Q. Has anyone ever talked to you, and outside of**
 9 **counsel, counsel's office on the 11th floor, has anyone**
 10 **talked to you about the allegations of the lawsuit?**
 11 A. No.
 12 **Q. No supervisors have talked to you? No one from**
 13 **TPD has talked to you?**
 14 A. No.
 15 **Q. Have you talked to any other officers about the**
 16 **lawsuit?**
 17 A. The specific lawsuit or just the fact that
 18 there is a lawsuit?
 19 **Q. Well, that there is this specific lawsuit.**
 20 A. When the lawsuit was first filed, I believe
 21 there was an issue contacting Officer Erik Levitt, and
 22 I've been in contact with him since he left.
 23 So I made sure that he contacted the City's
 24 attorneys so that they can contact him. So that was a
 25 contact I had with him regarding this lawsuit.

5 (Pages 17 to 20)

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Officer Christopher Bain

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Q. My understanding is Mr. Levitt has relocated to Canada; is that correct?

A. That is correct.

Q. How often do you stay in contact with Erik Levitt?

A. Mainly through Facebook messaging on occasion a couple times a year.

Q. Have you talked to Erik Levitt about this lawsuit?

A. Only his need to contact the attorneys. Nothing specific about the lawsuit.

Q. How about anyone else, did you ever talk to Kevin Jepson about the lawsuit?

A. Not specifically the lawsuit, no.

Q. How about the incident more generally?

A. Not since the date of the incident.

Q. And we'll get back to that in just a little bit.

As a part of the exchange of information in this case, we call it discovery, I was afforded a list, and I will ask that to be marked as Exhibit 3. (Exhibit No. 3 marked.)

Q. (By Mr. Cochran) And for the record, Exhibit 3 is a photocopy of an Excel spreadsheet that was provided by the City of Tacoma in response to written questions

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that were authored and issued by my office.

To the best of my understanding, this is a list that begins in 2011 based on the confines of the particular database that this is contained within, but this is instances in which you, Officer Christopher Bain, had either a complaint levied against you or a use of force.

Have you seen Exhibit 3 in any form prior to today? And it goes two pages. It's -- if you just flip it over, it's got the other part.

MR. COCHRAN: And I apologize for the small print. That's the only way we could do an Excel spreadsheet.

MS. COX: Can you see it okay?

THE WITNESS: Yeah, it's fine.

A. I have not seen this specific -- these specific pages, but I have seen the list of my -- of these incidents when somebody does a PDR request -- of my memory and from my experience, if somebody does a PDR request, I get notified of that PDR request.

Q. (By Mr. Cochran) Have you been notified of a PDR request in the past about either complaints or use of force from you?

A. Yes.

Q. You have. How many times do you figure?

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A. To the best of my recollection, two or three times.

Q. When was the first time you were notified that there was a PDR regarding use of force and complaints levied against you?

A. It was -- if I remember right, it was sometime in 2011 or 2012 while I was a DUI officer was the incident. So to the best of my recollection, it was probably a year after that, somebody had filed a lawsuit against the city alleging excessive force, and they PDR'd my history. I believe that would have been the first time.

Q. Do you know -- so there was an actual lawsuit that was filed?

A. Yes.

Q. And did it name you personally?

A. It named the city and me personally, yes.

Q. Do you remember who the plaintiff was in the case?

A. I could not tell you his name, no.

Q. But it was stemming from an action in what year was it?

A. It would have been 2011 or '12. It was while I was a DUI enforcement officer.

Q. Do you recall what the substance of the

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allocation was in the lawsuit?

A. Yes, I do.

Q. What was?

A. I had contacted a vehicle that was stopped in the middle of the road. There was a large male driver in the driver's seat, a large male in the driver's seat. When I asked for his ID, he said it would be easier just to kill him.

For his safety, I had him exit the vehicle and conduct a pat-down search of his person, found marijuana in his pocket, tried to place him under arrest, and he fought myself and another officer.

We eventually got him into handcuffs and placed him under arrest for the possession of the marijuana as well as assaulting both myself and the other officer, and he alleged excessive force. And I believe the case was dismissed.

Q. That was my next question.

Do you recall any of the circumstances behind the dismissal?

A. I don't.

Q. Were you deposed in that case?

A. I was not.

Q. Do you recall who the plaintiff was in that case?

6 (Pages 21 to 24)

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1 A. I don't recall his name.

2 **Q. Have you ever been named in any other lawsuit?**

3 A. No.

4 **Q. And that's aside from --**

5 A. This one?

6 **Q. Yeah, from 2011, this one or any domestic**
7 **lawsuits or anything like that.**

8 I'm just taking a look at the teeny writing
9 myself because my eyes are not that good.

10 Beginning if you come down one, two, three,
11 four, five, six, seven, in 12COM-0028, there is a
12 complaint, there's actually three of them, for
13 insubordination, unsatisfactory performance and
14 truthfulness.

15 Two of those complaints were sustained
16 according to this sheet, the insubordination and
17 unsatisfactory performance. Truthfulness was not
18 sustained, and it was ordered by Captain CP Taylor and
19 served by Lieutenant Jewel Lerum.

20 Does that sound familiar?

21 A. Yes, it does.

22 **Q. Tell me what you can recall about that**
23 **particular incident.**

24 A. The day before or a couple days before I left
25 for DRE school, which was held in the middle of Oregon,

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1 and said, "You need to correct this."

2 I replied, "I did correct -- I did fix it,"

3 because I was under the assumption that I had corrected
4 whatever I needed to. I went back and re-read it and
5 then corrected it.

6 And then he said, "No, you need to re-correct
7 it."

8 And I responded, "I don't know what you -- what
9 more you need. Can you -- you need to be more specific.
10 I have corrected it."

11 He took that as insubordination and lying that
12 I actually corrected it. So when I returned from DRE
13 school, I was interviewed regarding that, and they
14 upheld the insubordination regarding the email and
15 unsatisfactory job performance of fixing my report in a
16 timely manner.

17 But the truthfulness was dismissed because of
18 the miscommunication and the communications with the
19 emails.

20 **Q. Did you get any sort of counseling with regard**
21 **to the sustaining of the insubordination and the**
22 **unsatisfactory performance decisions?**

23 A. To the best of my recollection, I do believe I
24 got verbal counseling on proper email etiquette and then
25 fixing reports in a timely manner, which is common on a

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1 I can't give you an exact city, I conducted a traffic
2 stop for the registration of a vehicle coming back with
3 the owner being suspended in the third degree.

4 Upon contacting the driver, the driver --
5 before I could say anything, the driver handed me a
6 license and said my license is suspended. It ended up
7 not being the registered owner of the vehicle, but
8 because they had admitted to driving while suspended
9 before I could even ask a question, I continued with the
10 suspended third arrest.

11 And I didn't document that incident, that
12 arrest, or the PC well enough for the sergeant at the
13 time who I believe was Verone.

14 So he sent me an email stating I needed to
15 correct the report. I was down in Oregon I said, but I
16 took my work computer to help study for the -- for the
17 DRE school. So I tried to fix the report remotely
18 through the Enforcer program. I thought that I had.

19 My normal procedure for writing reports is to
20 write it in a Word document to help with spelling and
21 grammar, and then I cut and paste.

22 On many occasions, some things don't transfer
23 over during the cut and paste, maybe I miss it, and that
24 must have happened here. I didn't correct it to
25 sergeant -- the sergeant's standards. He just replied

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1 first offense complaint sustained.

2 **Q. Would you say that it's routine for Tacoma**
3 **police officers to receive sustained findings of**
4 **insubordination throughout the course of their career?**

5 MS. COX: Objection; form.

6 **Q. (By Mr. Cochran) If you know.**

7 A. I haven't talked to any other officers based on
8 that particular complaint or the result of a complaint
9 of insubordination.

10 **Q. How about just more generally, any**
11 **conversations that you've had with either supervisors or**
12 **fellow officers where they've indicated that getting a**
13 **sustained finding with regard to a charge of**
14 **insubordination is a regular occurrence with the Tacoma**
15 **Police Department?**

16 MS. COX: Same objection.

17 A. Based on my recollection, I haven't heard of
18 insubordination being very common, no.

19 **Q. (By Mr. Cochran) How about the same question**
20 **but with regard to unsatisfactory performance?**

21 MS. COX: Same objection.

22 Answer if you can.

23 A. I typically don't talk to other officers about
24 trouble they've gotten into. And to my recollection
25 officers haven't come to me with -- when they get

7 (Pages 25 to 28)

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1 sustained complaints or when they get complaints.

2 **Q. (By Mr. Cochran) Have you found throughout the**
 3 **course of your career that there are attempts by TPD**
 4 **managers to try and avoid levying a complaint against an**
 5 **officer with regard to insubordination or unsatisfactory**
 6 **performance?**

7 MS. COX: Objection; form.

8 Answer if you can.

9 A. I don't have any knowledge of the department
 10 doing that or not doing that.

11 **Q. (By Mr. Cochran) Have you had instances where**
 12 **a charge of insubordination or unsatisfactory**
 13 **performance was threatened to be brought against you,**
 14 **but you were given an opportunity to remedy whatever the**
 15 **-- whatever the contentious point was?**

16 A. No.

17 **Q. In your experience if there is some sort of a**
 18 **problem, supervisors have just filed a complaint against**
 19 **you, is that right, rather than try and remedy whatever**
 20 **the problem is?**

21 MS. COX: Objection; form.

22 Answer if you can.

23 A. I'm sorry. Could you repeat the question?

24 **Q. (By Mr. Cochran) Right.**

25 **In your experience as a Tacoma police officer,**

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1 the rifle case in the paper that I'm seeing.

2 **Q. If you just look up one -- if you look at the**
 3 **far right narrative.**

4 A. Oh, I'm sorry. Now I see it, yes. The way
 5 this is written, it looks like it's under the use of
 6 force 0012 so --

7 **Q. It's hard to read a spreadsheet on paper.**

8 A. Yes, I do recall that.

9 **Q. Okay. Tell me what to the best of your**
 10 **recollection happened in that case.**

11 A. When we are issued the rifles, we are issued a
 12 case to go with them. The case at that time is a very
 13 light, soft, padded case to keep the rifle in when it's
 14 not in a safe or a rack in our vehicle.

15 The trunk of -- at the time, I was driving a
 16 Crown Victoria. We keep lots of stuff in our trunks.
 17 As a DRE, I have lots of equipment I have -- I take and
 18 sometimes take in and out.

19 To the best of my recollection, I believe I did
 20 evaluate a DRE evaluation on JBLM, Joint Base Lewis
 21 McChord, and the -- I took some stuff out of my trunk to
 22 get to the equipment that I needed. And there's a
 23 chance that it was windy -- I do remember it was windy
 24 that day. There's a chance that it blew out of my field
 25 of view, and I didn't see to put it back in my trunk.

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1 **has it been -- has it been your experience that**
 2 **allegations of either unsatisfactory performance or**
 3 **insubordination have just been levied against you at a**
 4 **complaint level rather than a manager trying to work**
 5 **with you to remedy whatever the problem is?**

6 A. In my experience, it's not an either or. If
 7 there's a complaint levied, then a supervisor will work
 8 with the officer to correct whatever issues they need
 9 documented and -- what I believe either it used to be
 10 called, I'm pretty sure they still call it the, blue
 11 team, our blue team system.

12 So complaints are documented through the blue
 13 team by supervisors. And then from there, they go with
 14 whatever decision they make on how to go toward with the
 15 complaint.

16 **Q. If you look at 12COMM-0085, there's another**
 17 **unsatisfactory performance complaint. Once again it's**
 18 **sustained. It's ordered by Captain CP Taylor served by**
 19 **Lieutenant Jewel Lerum.**

20 A. You said 85, correct?

21 **Q. Yeah, 0085.**

22 **Do you recall the substance of that complaint?**
 23 **I believe this one involved a soft-sided rifle case that**
 24 **was found unattended to or discarded.**

25 A. Oh. I'm sorry. It doesn't say anything about

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1 And somebody had turned it in.

2 **Q. And at that point, there was a sustained**
 3 **unsatisfactory performance complaint issued against you.**
 4 **Do you recall who from the department issued the**
 5 **complaint?**

6 A. I believe at the time my supervisor was -- his
 7 name was Sergeant Waters. I believe as my supervisor,
 8 he would have been the one to file the complaint to the
 9 best of my recollection.

10 **Q. Did you -- it says written counseling. Do you**
 11 **remember getting written counseling?**

12 A. I do.

13 **Q. What was the substance of the written**
 14 **counseling if you remember?**

15 A. Since it was the second -- second
 16 unsatisfactory performance, it goes from verbal
 17 counseling to written counseling. And it's a documented
 18 incident that I had lost a vital piece of equipment
 19 being a rifle case, not the fact that it's just a case,
 20 the fact that a rifle could have been inside the case
 21 when lost. That's what made it a bigger deal than just
 22 being a case.

23 And so the counseling was to take better care
 24 of my equipment.

25 **Q. Can you go down to 12COMM-0167? There are four**

8 (Pages 29 to 32)

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1 complaints, unsatisfactory performance, employment
2 activities while on sick leave, return to work following
3 sick leave and off-duty policies, all of which were
4 sustained and included written reprimands.

5 Do you recall that particular incident?

6 A. I do.

7 Q. Tell me what you can recall about 12COMM-0167.

8 A. I had gotten sick the couple days before I was
9 scheduled to work an offer-duty shift at a haunted house
10 within the City of Tacoma. I was -- understood that
11 while on sick -- while you were sick, you couldn't work
12 off duty. If you take time off work sick, you can't use
13 the time that you are supposed to be on patrol to work
14 an off-duty job.

15 So I had called in sick the day before. The
16 next day I was supposed to work. I was not scheduled to
17 work that day. I didn't miss any work to work this
18 off-duty job.

19 But when I worked the job, I was contacted by
20 the sergeant and said, "You're still on the sick board."

21 And I said, "I'm no longer sick. It was just
22 for yesterday."

23 And then he advised me to review the policy and
24 procedures on sick leave. And I had to write him -- I
25 believe I had to write him a memo either to him or

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1 A. Yes, that's correct.

2 Q. Do you recall other than the citizen, was there
3 a department complaint as well, someone that levied a
4 complaint against you from the department?

5 A. To my recollection, I believe it was just the
6 citizen. If there was a complaint by the department, I
7 don't recall that.

8 Q. It says oral reprimand. Do you recall what the
9 substance of the reprimand was?

10 A. Yes, I do believe I do.

11 Q. What was that?

12 A. It was removing my name tag off of my uniform
13 and initially failing to identify myself.

14 Q. Okay. And as far as the reprimand, was it that
15 you needed to identify yourself and keep your name tag
16 on?

17 A. Yes.

18 Q. If you go down to 20COMM-0057, there's a
19 complaint regarding vehicle pursuit operations. Again,
20 it was sustained, and this was a verbal warning. Do you
21 recall what the substance of that was?

22 A. I do.

23 Q. Tell me what you can recall about that
24 complaint.

25 A. There was other officers that were pursuing

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1 direct supervisor, which was still, I believe, Sergeant
2 Waters at that time indicating why I was working when I
3 was on sick leave. And I just misunderstood the policy
4 of sick leave.

5 Q. How would you characterize your overall
6 relationship with Sergeant Waters?

7 A. It was -- it was fine. He was a tough
8 supervisor, very much by the book. I did a lot of -- a
9 lot of patrol activity and DUI enforcement during the
10 time, and DUI endorsement wasn't something he was very
11 familiar with.

12 So he would often have questions or issues with
13 some of the stuff that he thought I did wrong, and I
14 sometimes had to correct him.

15 We had a good working relationship while he was
16 my supervisor for about, I think, a period of about two
17 or three years, if that.

18 Q. If you flip the page? If you go down to
19 20COMM-0049, there are two complaints, one on
20 identification and the other one unbecoming contact --
21 conduct. Both are sustained. There's an oral
22 reprimand.

23 It's my understanding that that had to do with
24 a citizen who was taking video at a substation. Is that
25 your recollection as well?

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1 initially it was a stolen vehicle and a stolen boat.
2 That initial pursuit was called off once the vehicle got
3 too reckless.

4 That pursuit happened -- that part of the
5 pursued happened near Point Defiance Park. And I was
6 still assigned to the downtown area. So I wasn't part
7 of that pursuit.

8 When they terminated that, other officers found
9 the same vehicle with the boat on Ruston Way. They
10 tried to make contact with that driver. It was relayed
11 over our police radio that the driver had intentionally
12 tried to run people over in order to flee their contact.

13 So they had probable cause for assault in the
14 second degree was the information that they had relayed
15 to us over the radio.

16 I believe there was two officers -- there was
17 two separate police vehicles that were pursuing after
18 that attempted contact on Ruston Way. I was situated at
19 North -- Or South 21st and Pacific Avenue intersection
20 just in case the pursuit -- because they went from
21 Ruston Way to Schuster Parkway onto Pacific, and they
22 continued down Pacific. And when they passed Pacific,
23 they were either going to go onto the freeway or
24 continue up Pacific. Once they continued on Pacific, I
25 joined in.

9 (Pages 33 to 36)

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1 The pursuit was called out over the radio.
2 Updates were given. No order was given to discontinue
3 the pursuit.

4 At that point, I was the third vehicle in the
5 pursued. It got onto I-5 southbound from Pacific
6 Avenue, and then it started -- then it went from the on
7 ramp all the way over to the left side of the freeway.
8 At that point, I was the second vehicle in the pursuit
9 because I was able to catch up and then go all the way
10 over behind the other vehicle -- behind the other police
11 vehicle.

12 And it continued to swerve. It went over,
13 like, it was going to get onto 16 and then Highway 16
14 going westbound, and then it continued southbound I-5,
15 got onto 74th where it hit another vehicle in a T-bone
16 style collision.

17 And the complaint was that I had violated the
18 pursuit policy, and I should have terminated the
19 pursuit.

20 **Q. And that was ultimately sustained; is that**
21 **right?**

22 A. Yes, it was.

23 **Q. What was the result? It says counseling; is**
24 **that right? Yeah, it says counseling or was that a**
25 **verbal warning?**

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1 A. The vehicle pursuit is a verbal warning.

2 **Q. There we go.**

3 **Do you recall who gave you the verbal warning?**

4 A. My sergeant at the time Todd Wimmer.

5 **Q. And the final one that is a sustained complaint**
6 **is 20COMM-0105. It says unsatisfactory performance, and**
7 **it had to do with a written traffic report that you had**
8 **authored regarding a collision between a driver and a**
9 **semi truck. Do you recall that?**

10 A. I do.

11 **Q. Okay. So what happened in that particular**
12 **case?**

13 A. The basis of the complaint is I did not contact
14 a witness that was -- had called in and that was in our
15 -- in the CAD call, computer automated dispatch call.
16 The collision happened on Portland Ave under I-5 during
17 rush hour traffic, which is a very busy time, lots of
18 traffic.

19 And I have a semi and then a vehicle, I
20 believe, that was pulling a trailer blocking multiple
21 lanes of traffic. I was on scene for, to the best of my
22 recollection, probably 45 minutes completing the report
23 and issuing the ticket.

24 And then I did not see that somebody had called
25 in and was a witness and was available for contact in

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1 the call. As I said, there was lots of traffic around.
2 My concern was being in the middle of traffic and my
3 safety as well as the safety of others and getting the
4 roadway cleared. So I did not see that there was a
5 witness to contact.

6 The person who I issued the ticket to disagreed
7 with my ticket, contested it in court, and then the
8 ticket was dropped. I believe that she got ahold of the
9 CAD call, saw that there was a witness and complained
10 that I did not contact the witness.

11 **Q. In that case, I read some of the documentation**
12 **that was submitted by the complainant that was turned**
13 **over pursuant to written discovery. And the complainant**
14 **said that it had cost her significant time, money and**
15 **mental anguish as a result of your actions on the case.**

16 **Prior to receiving a written complaint, were**
17 **there any efforts by that citizen to contact you about**
18 **the collision?**

19 A. I don't believe -- to my recollection, she --
20 after the contact at the collision, I don't believe
21 there was any other contact.

22 **Q. No attempts to try and get you to re-visit the**
23 **written report or anything like that?**

24 A. Not to my memory, no.

25 **Q. There was also talk about a tribal officer who**

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1 **had arrived on the scene. Do you have any recollection**
2 **of that?**

3 A. I think he arrived there before I got there.
4 Sometimes they do that when they are in the area for
5 traffic control because they are closer. I don't -- to
6 my recollection, I don't recall him writing any report
7 or documenting anything.

8 **Q. With regard to the overall sustained complaints**
9 **that you've had over the course of your work history at**
10 **the Tacoma Police Department, has anyone ever talked to**
11 **you about concerns about having this many sustained**
12 **complaints?**

13 A. No.

14 **Q. And you don't have any knowledge yourself as to**
15 **what an average amount of sustained complaints might be**
16 **for a TPD officer over the course of a career, do you?**

17 A. I do not.

18 **Q. Do you personally feel like you've had a lot of**
19 **complaints that have been sustained by the Tacoma Police**
20 **Department?**

21 MS. COX: Objection; form.

22 Answer if you can.

23 A. No, I don't have any concern.

24 **Q. (By Ms. Cox) But there's been no attempt to**
25 **the best of your knowledge either by supervisors or**

10 (Pages 37 to 40)

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1 anyone else to counsel you with regard to the importance
2 of not having sustained complaints throughout your work
3 with TPD?

4 A. No. The counseling I get is for the specific
5 complaints, and I haven't received any counseling
6 regarding the number of complaints.

7 **Q. You had a very difficult incident on 40th and G
8 Street in 2019, correct?**

9 A. That is correct.

10 **Q. With regard to what happened, did you ever get
11 counseling from the department to deal with the shooting
12 death of I think it's Hashim Wilson?**

13 A. Counseling as in what type of counseling?

14 **Q. You getting grief counseling, PTSD evaluation,
15 anything like that from the department.**

16 A. Yes. We have an in-house mental health
17 specialist available to us any time we need.

18 **Q. Did you take advantage of that in-house mental
19 health specialist after the shooting death of Hashim
20 Wilson?**

21 A. I talked with Dr. Fitzpatrick is his name that
22 day, and he followed up with me once I returned to work
23 and, I think, a couple times after that just to check
24 in. I did not have any scheduled sessions specifically
25 for that reason.

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1 **Q. How long were you out, do you recall, after --
2 I'm guessing it was an administrative leave?**

3 A. It was.

4 **Q. How long were you out on administrative leave?**

5 A. Well, I also had a scheduled vacation that just
6 happened to coincide with directly after the
7 administrative leave. So I believe the administrative
8 leave was 10 to 14 days. I can't recall which it was.

9 And then once -- I told them that I had tickets
10 to fly to the East Coast with the whole family, spent a
11 lot of money on it, and so once they told me I could go,
12 then I could go. So I believe the administrative leave
13 ended within 10 to 14 days.

14 **Q. And other than a couple of just follow-up phone
15 calls, you didn't have any other mental health therapy,
16 counseling or even an evaluation in the wake of the
17 shooting death of Hashim Wilson?**

18 A. No.

19 **Q. That was in July of 2019; is that right?**

20 A. That sounds correct. I'm bad with dates so --
21 but that sounds correct.

22 **Q. If -- and there's a lot of paperwork in this
23 case. But if my recall is correct, do you remember you
24 learning that the use of force had been deemed justified
25 by the Pierce County Prosecutor Mary Robnett's office**

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1 just prior to the incident in Wright Park involving my
2 client Zim Contreraz?

3 A. I don't recall those dates being close
4 together.

5 MR. COCHRAN: I'm going to take a break
6 because I need to use the restroom, and I want Barbara's
7 fingers to have a break too. So do you want to do,
8 like, five minutes or let's come back at 11:05.

9 MS. TAYLOR: Okay.

10 THE VIDEOGRAPHER: Going off the record --
11 going off the record at 10:57 a.m.

12 (Recess was taken from 10:57 a.m. to
13 11:03 a.m.)

14 THE VIDEOGRAPHER: We're back on the record
15 at 11:03.

16 **Q. (By Mr. Cochran) Officer Bain, tell me about
17 your relationship -- well, let me ask you this: Do you
18 know the name Joel Cheney?**

19 A. I do.

20 **Q. And how do you know the name Joel Cheney?**

21 A. He was a coworker -- he was a fellow officer at
22 the Tacoma Police Department, but he has since removed
23 -- separated his employment and passed away.

24 **Q. He left in, from what I saw, September of 2021.
25 Does that sound about right?**

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1 A. That sounds about right.

2 **Q. How often did you work with Joel Cheney, if at
3 all?**

4 A. Mostly it was in passing. We were assigned to
5 opposite sides of the city. He was assigned to the
6 south end, and I was assigned to the north end of the
7 city. So if we worked in the same area, it was only
8 when bodies were needed to be moved around, so it was
9 sparingly.

10 **Q. Did you consider him a friend?**

11 A. No.

12 **Q. Do you have any knowledge about an internal
13 affairs complaint that was apparently alleged with
14 regard to Joel Cheney?**

15 A. No.

16 **Q. I'm going to hand you what I will ask be marked
17 as Exhibit 4.**

18 (Exhibit No. 4 marked.)

19 MR. COCHRAN: You have a copy.

20 MS. COX: Oh, do I?

21 MR. COCHRAN: Yeah, that's the little --

22 MS. COX: Oh, thank you.

23 **Q. (By Mr. Cochran) And go ahead and read it.
24 And once you've had a chance to read it, just let me
25 know.**

11 (Pages 41 to 44)

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A. (Peruses document.) Okay.

Q. The second sentence reads -- and just for the record, this was produced as a part of the personnel file for former Officer Joel Cheney. The identification at the bottom is P/TPD JC and the last two digits are 17.

It appears to be a -- either an email or a letter that was sent to Chief Mike Ake from Joel Cheney. And the second sentence reads, "My decision to submit my resignation was made in the wake of being placed on emergency administrative leave in regards to a complaint made against me which I'm told is being investigated by internal affairs."

Are you aware of any internal affairs complaint or investigation with regard to Joel Cheney other than what's in front of you?

A. I -- you hear things within the department, but nothing substantiated as far as formal -- formal discipline or formal complaints.

I do recall him resigning and then coming back and then resigning. But the specifics of that were never made public as far as my recollection or my memory. And as far as I know, the department didn't release any official statement. So it was -- it was never told to us why.

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Q. What was -- what did you hear with regard to any possibilities as to why there was an internal affairs investigation that was either suspected or could have or was actually brought regarding Joel Cheney?

MS. COX: Objection; form.

Answer if you can.

A. The rumors that I've heard is that he possibly had issues with pain killers related to a back injury that he had either during the military or during his work as a police officer.

Q. (By Mr. Cochran) Anything other than that?

A. That's the -- the extent of my knowledge of his issues and the possible complaint.

Q. Do you recall generally the incident which is the subject of this complaint for damages in the lawsuit regarding my client Zim Contreraz?

A. Do I recall the incident?

Q. Yeah, do you recall?

A. Yes, I do.

Q. Tell me to the best of your recollection how you first got involved in what ended up being an interaction with Zim Contreraz. How do you remember first being contacted?

MS. COX: Objection; form.

A. At the time I was a training officer, and my --

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the officer I was training is Erik Levitt. When I'm training other officers, newer officers, I try to give them as much experience as possible.

I believe this incident happened at the beginning of the overlap between swings and graves. Grave shift comes in at 8 o'clock or whenever -- their shift starts at 8 o'clock and whenever they get out of their turn out, the meeting at the department, they are usually -- calls are usually held for the graveyard officers so swing yard officers can do reports.

Being that I was training Officer Levitt, I wanted to give him as much experience as possible. When stuff comes out, I like to get them involved and stuff to get the officers into the habit of being more proactive and helping other officers out, being -- and volunteering for stuff instead of just waiting for calls to come to them.

It's kind of officer riding. That's what I try to impart to my student officers. So I encourage them when stuff comes out, if they can go help, to go do that.

So we assisted in this call because even though it was in the 2 Sector, we were assigned to the 1 Sector. It was on the border between those two sectors. And we went to go back up -- or we initially went to go

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help do an area check for the suspect. To the best of my recollection I believe it was an intimidation with a weapon call around Tacoma General Hospital.

The person had ran towards Wright Park, which would be eastbound from the hospital. And we were at the substation at the time that the call came out, so we headed in that direction. And before we got to the area to do the area check, Officer Cheney had contacted somebody near the conservatory at Wright Park, which is on the east side of the park, which is G Street, which is just next to G Street.

Q. Let me stop you right there. Which subsection were you and then Officer Levitt at?

A. The substation?

Q. Or substation I mean. Sorry.

A. The 1 Sector substation at 16th and MLK.

Q. Okay. Sorry about that. Go ahead.

A. And to my recollection, that's where we were at to either do paperwork or eat. That was our common practice.

So we had gone to the area, and Officer Cheney had contacted somebody, and we went to go back him up being that if it was intimidation with a weapon, the person possibly had a weapon, and we needed to get there to help assist in determining whether this person was

12 (Pages 45 to 48)

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involved or not.

So we went to the location where Officer Cheney had contacted the individual later identified as Mr. Contreras.

Q. Okay. Do you recall anything else about the interaction with officer -- or Mr. Contreras?

A. Yes. We parked in the park right on the walking path. And to my recollection, Officer Cheney was talking to Mr. Contreras. Mr. Contreras was leaning -- had -- it was a table about this height, and he was sitting on the edge of the table. He wasn't sitting with his whole weight being supported by the table but more leaning up against the table.

And he had -- to my recollection I thought he had been handcuffed. I did not engage in any handcuffing of Mr. Contreras. And then we stood by while Officer Cheney had tried to make contact with the officer who made initial contact with the victim, and he had tried to do that over the radio.

I believe there was communication issues because the officer that made contact with the victim was from a different department, if I remember right, I believe it was Dupont, who was leaving Tacoma General Hospital.

So there was some communication issues, so it

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him, if I remember right, within five to ten feet.

Officer Cheney's attention was not on Mr. Contreras since he was talking on his radio and, at some point, I believe had walked over to his vehicle and talked on his phone.

So my attention was on Mr. Contreras, not on Officer Cheney. At one point, Mr. Contreras had stood up from the table and made a step towards Officer Cheney. I grabbed with my left hand, my non-dominant hand, the handcuffs and told him that he needed to sit back down. I applied enough backwards pressure to assist him in sitting back down.

And then Mr. Contreras did sit -- when I say sit down, lean up against the table and half sitting down on the edge of the table, which he complied but then continued to be belligerent until he was released by Officer Cheney who eventually had made contact with the victim and the description wasn't close enough, and we were able to eliminate him as a suspect.

Once we released him, he continued to be belligerent with us. And then he insisted on talking to a supervisor, and that is when we requested Sergeant Jepson, who was the 2 Sector supervisor on graveyard shift. So he's the one that responded.

And Sergeant Jepson was -- while Sergeant

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was taking longer than normal. And I think Officer Cheney had to eventually make contact with somebody over the phone.

While he was doing that, Mr. Contreras to -- based on my extensive training and experience in dealing with impaired people, appeared to be highly impaired. I smelled alcohol on his breath and person. He had slurred speech. He had repetitive speech. I couldn't judge his balance or stance as, so I previously stated, he was leaning up against the table.

He was belligerent, and he was accusing us of only contacting him because of the color of his skin. I tried to emphasize to Mr. Contreras that the other officer thought he matched the clothing description, and people often, after they commit a crime, they remove some clothing to try to get away or try not to be noticed.

Mr. Contreras was not receptive to what I was saying. He continued to be belligerent. I told him if he wasn't the person, he would be released within a matter of minutes once we were able to confirm with the other officer or the victim.

And Officer Cheney was -- or Mr. Contreras was leaning up against the edge of the table. Officer Cheney would have been standing directly in front of

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Jepson was on his way, he told us we did not need to stay there, and he would contact Mr. Contreras when he got there. We left.

Q. How long did you stay on scene after Sergeant Jepson came?

A. I don't believe we were there -- I don't recall being there while Sergeant Jepson was there. If we were, it was very briefly. Being a student -- being a training officer and having a student, when we clear a call, when we finish the call, we get back in the car. There's usually a conversation, so it's back and forth how did that call go, what the officer saw, what he did, training conversations.

So we don't usually leave the scene right away unless there's an immediate need to. So if we did, my -- my focus was on Officer Levitt. It wasn't on whether Sergeant Jepson had arrived or not.

Q. Okay. Let me break down a little bit of what you said.

You said that Mr. Contreras appeared highly impaired; is that right?

A. I believe I specifically said intoxicated.

Q. I think you started with impaired, but you say that he was intoxicated?

A. Yes.

13 (Pages 49 to 52)

Page 53

1 Q. And how did you specifically come to the
2 determination at least in your mind that Mr. Contreraz
3 was highly intoxicated on July 12th of 2020?

4 A. As I stated, he had a strong odor of alcohol on
5 his breath. I could smell it even at a distance. I did
6 not stand directly next to him. I kept a safe distance
7 from him.

8 I could hear that he had thick, slurred speech.
9 He repeated his speech very often. He had bloodshot and
10 watery eyes. And if I remember right, I do believe a
11 couple of times he did even tell us that he had been
12 drinking.

13 Q. That's -- that's what you recall?

14 A. Yes.

15 Q. Okay. And you said that Mr. Contreraz was
16 seated long ways at the picnic table at Wright Park near
17 the conservatory at the end of the table; is that right?

18 A. That is correct.

19 Q. Do you remember where his hands were at the
20 time that you engaged him?

21 A. The initial contact or the time I actually made
22 physical contact?

23 Q. When you made physical contact.

24 A. His hands were cuffed behind his back.

25 Q. Okay. Do you recall which side of the table

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1 Cheney was.

2 Q. Okay. Who else was there from the Tacoma
3 Police Department? It was you, Erik Levitt, Joel
4 Cheney. Do you remember who else was there?

5 A. I believe Officer Branham was there as well.

6 Q. Anybody else?

7 A. To my recollection, I don't recall anybody else
8 being on scene, but there could have been.

9 Q. Do you recall anyone other than Tacoma Police
10 Department employees that were located in the immediate
11 area to where Zim Contreraz was handcuffed on a picnic
12 table in Wright Park?

13 A. When you --

14 MS. COX: Sorry. Objection; form.

15 Answer if you can or re-ask the question.

16 A. When you say immediate area, what kind of area
17 are you talking about.

18 Q. (By Mr. Cochran) I'm talking within 15 feet of
19 where you were.

20 A. Within 15 feet, no, we were the only people
21 within 15 feet.

22 Q. How about within 50 feet?

23 A. Being that it was dark, there could have been
24 somebody within 15 feet. There's a possibility we
25 wouldn't have been able to see them.

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1 you were or which side of Mr. Contreraz you were located
2 at?

3 A. I would have been to his right since I used my
4 left hand to contact him.

5 Q. So it's your testimony here today that you were
6 on the right side of Mr. Contreraz as he was seated and
7 facing out towards the hill that goes down at Wright
8 Park?

9 A. I believe so, yes. I believe he was down the
10 hill, but, yes, I was definitely on his right-hand side.

11 Q. And were you directly behind him or were you
12 kind of canted behind him or directly to the right of
13 him?

14 A. I couldn't be directly behind him because the
15 table was directly behind him. I was to his right
16 slightly off to the back for safety, for officer safety
17 reasons. It's a much safer position to be.

18 Q. Where was Officer Cheney at this time?

19 A. I believe he -- for the most part, he was
20 directly in front of Mr. Contreraz. Being that he was
21 either on his radio or phone, he was walking around when
22 he was not directly in contact with Mr. Contreraz.

23 When I made physical contact, I don't recall if
24 he was still there or if he had gone to his vehicle. As
25 I said, my focus was on Mr. Contreraz, not where Officer

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1 Q. Okay. Do you have any recollection of two
2 people who were on a picnic bench or were at a picnic
3 bench close enough to where you confronted Mr. Contreraz
4 that they were able to walk over and actually witness
5 your interaction with Zim Contreraz on July 12th of
6 2020?

7 MS. COX: Objection; form.

8 A. I do recall there was two people in the park as
9 well that we noticed that were behind our location. So
10 if they are behind the direction that Mr. Contreraz is
11 facing, so if we're concentrating on Mr. Contreraz, we
12 wouldn't be aware of them behind us. But I couldn't
13 give a distance of how close they were.

14 Q. (By Mr. Cochran) Describe those two people if
15 you can.

16 A. I could not. It was dark. I just was aware of
17 two people and just to make sure they weren't getting
18 any closer to for officer safety reasons.

19 Q. Okay. So you can't -- can you describe their
20 gender?

21 A. No, I did not get close enough to give any
22 description of the two people at all.

23 Q. So they weren't -- strike that.

24 Do you remember anyone that was close enough
25 where they actually would have been able to see you

14 (Pages 53 to 56)

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1 interact with Zim Contreras on July 12th of 2020?

2 MS. COX: Objection; form.

3 A. I don't know that I can testify what anybody
4 else could see when it's dark outside in the park and
5 whether the lights were on or not working at the time.

6 **Q. (By Mr. Cochran) And it's your testimony that**
7 **at the time that you interacted with Zim Contreras on**
8 **July 12th of 2020 in Wright Park in Tacoma, that the**
9 **light -- that it was dark at that time; is that right?**

10 A. To my recollection, it was dark when we were
11 contacting Mr. Contreras.

12 **Q. How dark? Was it pitch dark? Was it dusky?**
13 **Was it just before dusk?**

14 A. It was dark enough to where it was difficult to
15 see beyond where the lights were.

16 **Q. Did that include difficulty seeing what**
17 **Mr. Contreras was wearing?**

18 A. At -- while I was talking to him, while I made
19 contact with him on initial approach?

20 **Q. Yeah.**

21 A. Once I -- once I contacted him, it was easy to
22 see what he was wearing as I was close enough to see.

23 **Q. What was he wearing, if you can recall?**

24 A. I don't recall.

25 **Q. What was it about Zim Contreras as a responding**

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1 **there was need for backup?**

2 A. The fact that the call was an intimidation with
3 weapon, and he was contacting somebody who matched the
4 description, that's enough. You don't need to announce
5 that it's volatile. Those specifics would make it
6 enough to where you would want to get there sooner than
7 normal driving conditions.

8 **Q. Were you there when Zim Contreras or someone**
9 **else emptied the bag that he had with him?**

10 A. I do recall that he -- after we had un-
11 handcuffed him, he told us we could search his backpack.
12 And, like, we told him it wasn't necessarily. We had
13 already eliminated him.

14 And he dumped it -- from my recollection, he
15 dumped it out himself and told us to look inside the
16 backpack or bag.

17 **Q. What, if anything, did you find inside the bag?**

18 A. I did not search the contents of the bag. We
19 had already eliminated him when we were breaking our
20 contact with Mr. Contreras.

21 **Q. But to the best of your recollection as you sit**
22 **here today, he had already been un-handcuffed, Zim**
23 **Contreras, at that point?**

24 A. Yes.

25 **Q. And you don't remember any bystanders remarking**

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1 **officer that you thought his description was close**
2 **enough to that of the suspects who allegedly intimidated**
3 **someone with weapons at or around Wright Park on July**
4 **12th of 2020?**

5 A. I don't recall --

6 MS. COX: Hold on, please.

7 Objection; form.

8 **Q. (By Mr. Cochran) Go ahead.**

9 A. I don't recall reading the description as in,
10 like I said, we -- while driving to the area, Officer
11 Cheney had said he had contacted somebody, so our focus
12 isn't reading at that time. Our focus isn't reading the
13 specifics of what's in the call. It is responding to
14 back up an officer.

15 So our job wasn't to search for anybody at the
16 time. It wasn't to pay attention to the description.
17 It was to get to where the officer was to back him up to
18 make sure that he and everybody there was safe.

19 So when I arrived on scene, I hadn't read the
20 call or known what the description of the person was.
21 My job there at the time was to back up Officer Cheney.

22 **Q. Was there -- was there a call from Dr. -- or**
23 **strike that.**

24 **Was there a call from Officer Cheney or anyone**
25 **else that described the situation as volatile such that**

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1 **that your actions were out of line; is that right?**

2 A. That is -- that is correct.

3 **Q. What, if anything, did you do about your**
4 **observations that led you to believe that Zim Contreras**
5 **was highly intoxicated?**

6 A. What do you mean what did I do?

7 **Q. What did you do about having a drunk guy in the**
8 **park if you believed he was highly intoxicated? Did you**
9 **do anything about that?**

10 MS. COX: Objection; form.

11 Answer if you can.

12 A. He was able to walk away under his own power.
13 He did not want our help. Officer -- Sergeant Jepson
14 was on way -- on his way to talk to him because he had
15 requested the sergeant if he needed any further help, he
16 could have asked for it. But he didn't -- at no time
17 during our contact, did he ask for any type of
18 assistance, and I didn't believe that he needed to be
19 hospitalized or needed medical attention due to his
20 intoxication.

21 **Q. (By Mr. Cochran) Did you tell Kevin Jepson**
22 **that he was -- in your opinion, he was about to confront**
23 **someone who was highly intoxicated and belligerent?**

24 A. I believe --

25 MS. COX: Objection; form.

15 (Pages 57 to 60)

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THE WITNESS: Sorry.

I do believe I did inform Sergeant Japson that Mr. Contreraz was intoxicated and belligerent.

Q. (By Mr. Cochran) What did he say, if anything?

A. He acknowledged the information and said that he would be there to contact him and we did not need to stick around.

Q. Have you ever seen any videos that the plaintiff Mr. Contreraz took of that evening?

A. No, I have not.

Q. I will represent for you that in the video, which he took on his cell phone and it's my understanding that he put on social media live, that there are a number of officers who are parked along the side of the street where the conservatory is in Wright Park.

And they all appear to be staring at Mr. Contreraz according -- based on my interpretation of the video.

Does that recollect with your memory at all of that evening of staying around and looking at Mr. Contreraz after the interaction with him?

MS. COX: Objection; form.

Answer if you can.

A. I don't recall -- I don't recall seeing him as

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Levitt left Wright Park on July 12th of 2020 after interacting with my client Zim Contreraz, did you do anything?

MS. COX: Objection; form.

Answer if you can.

A. Until recently, I did not have recollection of writing any reports other than training officer reports that I would have conducted as a result of training Officer Levitt.

But it was brought to my attention within the last 24 hours that I did in fact write what is called a Field Information Report as a supplemental report documenting the incident.

Q. (By Mr. Cochran) A FIR, right, an F-I-R?

A. That is correct.

Q. Okay. First off, tell me about what you wrote in the training officer log.

A. I don't recall what I specifically wrote.

Q. Would that still exist to the best of your recollection --

A. We --

Q. -- or knowledge?

A. Since then, I believe we've changed programs, so I couldn't tell you whether that documentation is still available or not.

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I previously stated. My -- that was teaching -- I was teaching Officer Levitt, as he's my student officer, so my focus was on him. We were discussing the call prior to us leaving.

So I don't recall seeing anything about anybody videotaping, including Mr. Contreraz.

Q. (By Mr. Cochran) And is today the first time you've heard about a videotape or a video recording?

A. I -- I believe the attorney did tell me that he did videotape.

Q. And I'm not allowed to know --

A. Sorry. I wasn't sure.

MS. COX: It's okay.

Q. (By Mr. Cochran) I should have given you the proviso.

Other than Ms. Cox or Ms. Taylor or anybody in their office, had you heard from anyone else that there was -- there was video?

A. No.

Q. Okay. In the wake of your interaction with Mr. Contreraz at Wright Park on July 12th of 2020, did you do anything else?

A. Can you be more specific?

Q. Sure.

After you and Recruit Officer or Officer Erik

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Q. Based upon your experience is the interaction with Zim Contreraz on July 12th, 2020, with Training Officer Levitt something that, again, based on your experience you would have noted in the training officer notes?

A. It's possible depending on how busy the shift was and if there was any bigger incidents we would have documented.

Q. Well, typically what, based on your experience, do you document in those training logs?

A. If the student officer either does something really good or makes a mistake, I believe those are documented. If there's any type of big calls that the student officer has not handled or has had issues in the past and has corrected those, we would document that.

If it's a busy shift, we would stick to the bigger calls, shootings, stabbings, DV assaults type of reports to document.

If it's a slower shift, we would still find some stuff to document during the shift. So we might -- an incident such as this where there's no arrest made, there was no property booked, and there's very little interaction between the student officer and the person we contacted, that might have ended up in the training report, but also possibly not.

16 (Pages 61 to 64)

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Officer Christopher Bain

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1 Q. If it was something that was enough for you to
2 create a field incident report, would it be your
3 expectation that you also documented it within the
4 training log?

5 A. Not necessarily because the bulk of the contact
6 with Mr. Contreraz was between myself and him. So I
7 wouldn't include that in a training report. That would
8 be to document Officer Levitt's training.

9 Q. Today do you know where those training logs
10 would be located? I know you said you thought the
11 system had changed. Are they normally something that is
12 computerized that you submit electronically or is there
13 a paper form?

14 A. Computerized.

15 MS. COX: So my objection would be form.

16 And I saw you give an answer so...

17 Q. (By Mr. Cochran) I will have you take a look
18 at one of the CADs. This will be Exhibit No. 5.

19 (Exhibit No. 5 marked.)

20 Q. (By Mr. Cochran) Okay. Officer Bain, I've
21 handed you what's been marked as Exhibit 5. This has
22 been entered into other depositions prior to yours.

23 But please take a look at it. It consists of
24 pages, and it's got Bates numbers at the bottom. That's
25 what we use to identify documents, Contreraz 229 through

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1 on your recollection refreshed with what's been marked
2 as Exhibit 5?

3 A. No. There's not a whole lot of information
4 that I've testified to that's in this CAD call.

5 Q. Okay. So the information that you relayed
6 isn't necessarily -- well, strike that.

7 The information that you relayed previously in
8 your testimony is not reflected in the CAD call; is that
9 right?

10 A. Your question was was my memory refreshed and
11 did I base my testimony based on this CAD call.

12 Q. Right. And your answer was most of the things
13 that you testified to were not in this CAD call. Is
14 that right?

15 A. That's correct.

16 Q. Is there any particular reason why you didn't
17 note in what's been marked as Exhibit 5 the observations
18 that you had with regard to Zim Contreraz?

19 A. Because I included it in my field information
20 report.

21 Q. Okay. And is there any particular reason, and
22 I haven't seen it, but is there any particular reason
23 there was no effort made to identify Mr. Contreraz?

24 MS. COX: Objection; form.

25 Answer if you can.

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1 Contreraz 234.

2 And as you take a look at this, I want to ask
3 if you've seen this document in any form prior to today,
4 computerized, maybe one that did not include a check at
5 the beginning which says Include State Messages, any
6 form of this CAD Incident Inquiry.

7 A. In printout form or, like, on the computer?

8 Q. Electronic or print.

9 A. During the night of the incident on --
10 displayed on our computer, most of this CAD information
11 is in there. When it's printed, I believe some of the
12 stuff that might not be available in our computer ends
13 up in some of these. But this looks like it would have
14 contained everything that would be in our computer.

15 I have not seen it in printed form other than
16 conversations --

17 Q. And I get to know if you saw the document.

18 A. Okay.

19 Q. I just get to know what the communications are.

20 A. Okay.

21 Q. So have you seen it before today?

22 A. I believe so, yes.

23 Q. Okay. Did you have a chance to look it over?

24 A. Yes.

25 Q. And were you basing your testimony previously

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1 A. My recollection, there was effort made but
2 Mr. Contreraz refused. And I did document that in my
3 field information report.

4 Q. (By Mr. Cochran) I want to walk you through
5 what's been marked as Exhibit 5. So if you would refer
6 to that for me.

7 At system time 20:34:26 on the first page,
8 which is marked 229 of Exhibit No. 5, it reads DU16
9 flagged down by subject, advised he was chased out of
10 Wright Park by two subjects, one had gun, one had knife,
11 black male, gray tank top, long black shorts, white
12 male, black shirt, blond or brown hair. And then it
13 says OCC'D 5-10 ago.

14 Do you see that portion?

15 A. I do.

16 Q. Okay. I think you identified before that you
17 thought there was another officer from a different
18 department involved in the call; is that right?

19 A. Yes.

20 Q. And is that DU16?

21 A. Yes.

22 Q. And to the best of your knowledge, that's a
23 Dupont officer; is that right?

24 A. Yes.

25 Q. If you look a couple entries down to 20:35:54

17 (Pages 65 to 68)

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1 just below that, there's an identification of DU16 and
2 then in parentheses (DUPD195) Drake, Kyle.

3 Do you recognize the name Kyle Drake?

4 A. I don't recall ever meeting Kyle Drake.

5 Q. Okay. Based upon your experience as a Tacoma
6 police officer, would it be your expectation that DU16
7 also identified as (DUPD195) is in fact Kyle Drake
8 according to this CAD Incident Inquiry?

9 A. Yes.

10 Q. You see the description that talks about two
11 subjects being the concern of the call; is that right?

12 MS. COX: Objection; form.

13 A. Yes.

14 Q. (By Mr. Cochran) One is a black male who
15 allegedly had a knife with a gray tank top and long
16 black shorts and then a white male with black shirt,
17 blond or brown hair.

18 Do you see that portion?

19 MS. COX: Where are you referring to?

20 MR. COCHRAN: 20:34:26. We identified it
21 earlier, the same page, 229.

22 MS. COX: So you are going back to the entry
23 you identified initially?

24 MR. COCHRAN: Correct. Same page.

25 A. And to correct you, in the call it doesn't say

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1 had contacted the male there identified as Contreras.

2 So at no point did we search for the person.

3 But by the time we were done talking to or with our
4 contact with Contreras, I believe the other officers who
5 had done the area check were unable to locate anybody.
6 So the other officers had taken care of that part of the
7 call.

8 Q. Unable to locate any black males or white
9 males; is that right?

10 A. Anybody that matched the description.

11 Q. Okay. But who actually matched the description
12 of a black male with a gray tank top and long black
13 shorts?

14 A. To the best of my recollection.

15 Q. And a white male with a black shirt and blond
16 or brown hair; is that right?

17 A. Correct.

18 Q. If you flip the page, you will see, and I'm
19 imagining that you saw when you reviewed this document,
20 Officers Ruanni Franco, of course Joel Cheney who is
21 identified in the previous page, Brandon Scheetz,
22 Jonathan Douglas. That looks like that's it's for this
23 particular page.

24 Do you remember those individuals also
25 assisting with the call at Wright Park on July 12th of

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1 which one had the knife or which one had the gun. It
2 just says that one had a knife -- one had a gun, one had
3 a knife, and then it goes into the description. It does
4 not indicate which one had the knife and which one had
5 the gun.

6 Q. What do you see to be the description of the
7 black male?

8 A. Black male, gray tank top, long black shorts.

9 Q. Okay. And then with him allegedly is a white
10 male wearing a black shirt and blond or brown hair --

11 MS. COX: Objection; form.

12 Q. (By Mr. Cochran) -- Is that right?

13 MS. COX: Sorry. I jumped again.

14 MR. COCHRAN: That's okay.

15 MS. COX: Objection; form.

16 A. That's what was reported.

17 Q. (By Mr. Cochran) At any point on July 12th,
18 2020, were you looking specifically for two subjects
19 that were identified as one being a white male, one
20 being a black male with the descriptions that we just
21 looked at in system time 20:34:26 of the CAD Incident
22 Inquiry?

23 A. When we first started going towards the call,
24 we were going to look for the subjects. But before we
25 could get to that point, while enroute, Officer Cheney

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1 2020?

2 A. I don't recall all the officers that assisted
3 because they could have been doing the area check, and I
4 wouldn't have been made aware of that because I would
5 have been outside of my vehicle.

6 Q. Okay. If you look on the second page of
7 Exhibit 5, Contreras 230 is the Bates number on the
8 bottom of that page, and if you go down to the system
9 time of 20:41:12?

10 A. Okay.

11 Q. It reads, DU16 WM was the subject with the gun,
12 small black gun, possible Glock, BM had the knife. What
13 does that entry mean to you, if anything?

14 A. It means when we contact either somebody that
15 matches the white male or black male, we know what type
16 of weapon they were reported to have had.

17 Q. Okay. And from this, what type of weapon does
18 the white male allegedly have?

19 A. The gun.

20 Q. And how about the black male?

21 A. A knife.

22 Q. Were you looking for a white male with a gun
23 and a black male with a knife in Wright Park on July
24 12th of 2020?

25 A. As I previously stated, I didn't do any area

18 (Pages 69 to 72)

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1 check for any subjects.

2 Q. If you flip the page to what is now marked 231
3 in the Bates numbers?

4 A. (Complies.)

5 Q. If you look at system time of 20:50:04?

6 A. Which one?

7 Q. The first one. It says Dispatched. It has
8 P145 (TPD205807) Christopher -- or Bain, Christopher.

9 A. Hold on just one moment. I lost my microphone.

10 Q. And then P145 (TPD213311) Levitt, Eric. Did I
11 read that correctly?

12 A. You did.

13 Q. What is that indicating to you on the CAD
14 system or incident inquiry at 20:50:04, the dispatch
15 call?

16 A. Myself and Student Officer Levitt were
17 dispatched to the call, either we added ourselves on the
18 radio or on the computer to the call.

19 Q. Just below that with the same system time, but
20 this time it says Event Remark, it says P145 -- P145
21 assisting U344. Did I read that correctly?

22 A. Yes.

23 Q. And what does that mean to you, if anything?

24 A. It means we're assisting Union 344, who I
25 believe is Officer Cheney.

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1 Q. I see.

2 If you go down to system time 20:59:14, U344,
3 it notes BM, buff, do rag, tank top with knife, white
4 male, firearm, facial hair, blank t-shirt -- or black
5 T-shirt, shorts. Did I read that correctly?

6 A. Yes.

7 Q. Again, you were not looking for -- it's your
8 testimony that you were not looking for any specific
9 suspect when you headed to Wright Park; is that right?

10 A. No. I said when we started heading towards
11 Wright Park, our intention was to look for suspects.
12 But while in route there, officer Cheney had contacted a
13 suspect, and we went to back officer Cheney up instead
14 of doing the area check for the suspects.

15 Q. I see.

16 So just below that U344 at system time
17 21:00:02, it notes that there's PC felony harassment on
18 both. What does that mean to you?

19 A. I'm sorry. Can you repeat the timestamp?

20 Q. Sure. 21:00:30.

21 A. Okay. 21:00. Okay. I got it now.

22 Q. Oops. I'm sorry. It's 21:00:02.

23 A. There it is. Okay. Yep.

24 It means that there is felony -- probable cause
25 to arrest either of those subjects matching if they are

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1 Q. And at that point were you and former Officer
2 Levitt still at Substation 1?

3 A. I don't recall.

4 Q. If you go down to Event Remark, system time
5 20:57:45, there's a U344, which again I think is Officer
6 -- former Officer Joel Cheney. It says Secure TPLE11,
7 all units heading to Wrights Park. What, if anything,
8 does that narrative say to you?

9 A. That since we're dealing with an officer with
10 another department who does not have our primary
11 channels, we need to switch to a side channel in which
12 we can communicate with that officer directly instead of
13 playing radio with our dispatchers and their
14 dispatchers. It's a much more efficient form of
15 communication.

16 Q. What does TPLE11 mean, if anything? Is that
17 the channel?

18 A. Yes.

19 Q. And all units heading to Wrights Park, does
20 that mean anything to you?

21 A. It means any units on this call will head to --
22 will switch to that channel.

23 Q. And head to Wright Park?

24 A. All units that are heading to Wrights Park
25 switch to that channel.

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1 positively identified for the charge of felony
2 harassment.

3 Q. Does that change anything or did that change
4 anything for you when you were responding to Wright Park
5 on July 12th of 2020?

6 A. No.

7 Q. If you continue onto the next page. And
8 actually you can turn to the next page, which is
9 Contreras 233.

10 If you go down to system time 21:12:45.

11 A. Okay.

12 Q. There's a P145. That's you, right?

13 A. Yes. That's -- that is the designation for
14 Officer Levitt and myself. It's not -- it's not my
15 designator. It's not my -- it's Officer Levitt's who we
16 signed under. So that was myself and Officer Levitt's
17 designator.

18 Q. Sure. And let's go up a little bit just to
19 make it more clear.

20 If you go up to system time 21:12:30, it says
21 arrive.

22 A. Uh-huh.

23 Q. The narrative reads P145, and again it gives
24 your -- what I believe is your badge number, Bain,
25 Christopher, and then P145, and I believe that's the

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1 badge number of Erik Levitt, that's arrive time.

2 Below that at 21:12:30 there's an enroute, and,
3 again, there's a narrative of P145 again that has your
4 name and P145 Erik Levitt.

5 Below that at 21:12:31, P145's location south
6 3rd Street/South G Street. And then just below that,
7 21:12:31, P145 Comments: Black male, red shorts.

8 Why, if you were not concerned about the
9 description of the individual at Wright Park when you
10 actually arrived with Joel Cheney, did you make a
11 comment within the CAD Incident Inquiry about the black
12 male wearing red shorts?

13 MS. COX: Objection; form.

14 Answer if you can.

15 A. Can I go back and correct you a little bit on
16 the badge number?

17 Q. (By Mr. Cochran) Sure.

18 A. Okay. Paul 145 is Officer Levitt's badge
19 number. The TPD205807 is my employee number. And then
20 the TPD213311 is Officer Levitt's employee number.

21 I'm not signed in under my badge number because
22 I'm -- as an instructor or instructing officer, teaching
23 officer, we sign in under the student officer's badge
24 number. So I just wanted to correct that.

25 Q. No, I appreciate that correction.

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1 have heard an officer give an update of who they had or
2 an update of the suspect description. And I don't
3 recall if either myself or Officer Levitt made the
4 comment. Those would have been made over the radio
5 because that's SS03 -- 0233, those would have been added
6 by dispatch.

7 So from my understanding of the CAD system, I
8 don't recall who made the comments over the radio about
9 the black male, red shorts.

10 Q. Okay. But you agree with me that it came from
11 P145?

12 A. As long as the dispatcher entered that
13 information correctly. It's possible that somebody else
14 could have said it, and they misheard the officer that
15 said it and entered the wrong officer. I can't testify
16 to that right now.

17 Q. Here we look at U344, Joel Cheney, and he --
18 his number, his user number, is listed at system time
19 21:12:40 there's actually two entries at 21:12:40,
20 available, dispatched.

21 And then 21:12:41, enroute.

22 And then below that, it says event remark at
23 21:12:41, U344 -- U344 assisting P145.

24 Did I read that correctly?

25 A. You did.

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1 And you would actually be P273; is that right?

2 A. That is correct.

3 Q. Okay. So everything here that is being entered
4 in is entered into under P145. But for this particular
5 call, that includes yourself, Christopher Bain and Erik
6 Levitt; is that right?

7 A. That's correct.

8 Q. Okay. So the same question with regard to
9 21:12:31, there's comments from P145, either yourself or
10 Erik Levitt, commenting that there's a black male with
11 red shorts.

12 Again, based on your earlier testimony that you
13 were not concerned about what the description of the
14 individual was when you arrived to assist Joel Cheney,
15 why are there comments about a black male wearing red
16 shorts?

17 MS. COX: The same objection.

18 Answer if you can.

19 A. I don't recall saying that I wasn't concerned
20 about the description. I recall saying that I -- my
21 focus was on getting to back up Officer Cheney in he was
22 possibly contacting somebody with a weapon. Two
23 different things.

24 And as to why those comments were made, I don't
25 recall. Sometimes when we arrive on scene, we may not

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1 Q. Okay. Before you testified that you were
2 assisting Joel Cheney --

3 A. Yep.

4 Q. -- U344.

5 Here Joel Cheney is indicating at least to
6 South Sound 911 and the dispatcher that he in fact is
7 assisting P145. Right?

8 A. That's what the CAD call says.

9 Q. Okay. And below that, there's a P145 entry
10 again, this time at 21:12:45, and P145 now is
11 identifying the same individual with a black tank top
12 and red shorts, right?

13 A. It says black tan, red shorts.

14 Q. Wouldn't that be black tank top, red shorts?

15 A. Possibly.

16 Q. Okay. Again, why, if based on your prior
17 testimony, you weren't concerned about what the
18 individual was wearing, but in fact you said that you
19 came to assist U344 Joel Cheney is P145 remarking that
20 the individual that's being questioned has a black tank
21 top and red shorts?

22 MS. COX: Objection; form.

23 Answer if you can.

24 A. I can't answer as to why Joel Cheney would say
25 that or what information he gave. And, again, I never

20 (Pages 77 to 80)

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1 said I wasn't concerned with the clothing. My main
2 focus was to back up an officer not -- so I didn't say I
3 wasn't concerned.

4 **Q. Right. Back up an officer who at least**
5 **indicated to dispatch that he was assisting you, right?**

6 MS. COX: Objection; form.

7 Go ahead and answer.

8 A. That -- that doesn't mean that he was assisting
9 us. Sometimes dispatch inadvertently pulls somebody
10 from a call and has to reattach them to a call when
11 there's multiple officers on the call because when
12 there's this many officers, it can be a lot for one
13 dispatcher to move people around, add somebody to either
14 the call, the location, the notes from the officer that
15 they give over the radio.

16 And in my experience, I've been pulled from a
17 call inadvertently or they've put me in the wrong
18 location. And then in order to put me back at the
19 proper location, they have to attach -- if another
20 officer is at the location, they attach that officer to
21 that location so it looks like they are assisting, but
22 really they were there the entire time.

23 You would have to ask South Sound 911 as to why
24 they had those notes. I cannot testify to that.

25 **Q. Okay. Then let's find out what happened with**

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1 **21:15:11 says U057 1 detained; is that right?**

2 A. That is correct.

3 **Q. Based on your recollection of July 12th of 2020**
4 **and your reading of this CAD Incident Inquiry, is that**
5 **one detained person Zim Contreras?**

6 A. Based on my recollection of events, I don't
7 recall if John Branham was around anybody else that was
8 detained, but he was on scene with us when Mr. Contreras
9 was detained. So it could have been Mr. Contreras that
10 he was talking about being detained, but I can't testify
11 if he was around anybody else that was detained or not.

12 **Q. Okay. That's at 21:15:11.**

13 **And then if you go down a couple of entries to**
14 **21:21:25, so just over six minutes later, it reads, Unit**
15 **S197 -- sorry. Go just below that.**

16 **21:25:48, Unit 344, that's Joel Cheney, subject**
17 **no longer detained, has been advised that he's free to**
18 **leave for several minutes now.**

19 **Do you see that portion?**

20 A. I do.

21 **Q. There are very few entries in the CAD Incident**
22 **Inquiry between 21:15:11 when an individual was detained**
23 **and 21:25:48 that the subject is no longer detained. Do**
24 **you agree with me?**

25 A. Yes.

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1 **Ruanni Franco. At system time 21:13:07, event remark --**
2 **sorry -- dispatched, U358, name Franco Ruanni. Just**
3 **below that, 21:13:07, event remark, U358, which, again,**
4 **appears to be Ruanni Franco, assisting P145, right?**

5 A. That's what it says.

6 **Q. Okay. So in order to follow the logic that you**
7 **just explained, the dispatcher itself, Puget Sound 911,**
8 **made a mistake with regard to Joel Cheney assisting P145**
9 **and Ruanni Franco; is that right?**

10 MS. COX: Objection; form.

11 Answer if you can.

12 A. I can't testify whether they made a mistake or
13 why their reason of adding that, but they were not
14 assisting us, as we were assisting officer Cheney. And
15 I had no idea what Ruanni Franco was doing. I don't
16 recall seeing him there.

17 **Q. (By Mr. Cochran) Do you know who -- let's see.**
18 **U057 appears to be John Branham, is that the**
19 **way you read this report as well, if you go down to**
20 **21:15:05 in the system time?**

21 A. Correct.

22 **Q. Okay. If you go to system time 21:15:11,**
23 **again, we're on Page 233, Contreras 233 of what's been**
24 **marked for identification to the deposition of**
25 **Christopher Bain.**

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1 **Q. There's no mention that the person you've**
2 **detained is highly intoxicated, right?**

3 A. Correct.

4 **Q. No mention that he is belligerent, right?**

5 A. Correct.

6 **Q. No mention that his bag has been searched,**
7 **correct?**

8 A. Correct.

9 **Q. No mention that he has at all met the probable**
10 **cause for arrest, which had been indicated earlier in**
11 **the CAD Incident Inquiry, right?**

12 A. Correct.

13 **Q. Recognizing that you testified that you did not**
14 **-- you were not the one who was the acting officer on**
15 **scene, but you were actually assisting Joel Cheney, can**
16 **you tell me why the individual who was a black male**
17 **wearing red shorts in Wright Park on July 12th of 2020**
18 **was contacted and ultimately detained by the Tacoma**
19 **Police Department?**

20 MS. COX: Objection; form.

21 Answer if you can.

22 A. I can't tell you why Officer Cheney decided
23 that he was going to contact Mr. Contreras other than he
24 felt that he matched the description enough to at least
25 make contact and eliminate him as a suspect. As I have

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1 previously testified, sometimes people will shed
2 clothing. They'll have on -- in my experience in
3 searching people, they'll have multiple layers of
4 clothing on even in the summertime, especially for
5 people who intend to commit crimes.

6 So it is quite possible that the clothing might
7 not match, but maybe the physical descriptors will match
8 more. But you'd -- I can't -- I cannot testify as to
9 why Officer Cheney decided he was going to contact and
10 detain Mr. Contreraz.

11 **Q. But you would agree with me that Officer Cheney**
12 **is not the one indicated in Exhibit No. 5 who entered in**
13 **comments that there was a black male with red shorts**
14 **wearing a black tank top and red shorts in this call,**
15 **right?**

16 MS. COX: Objection; form.

17 A. I thought he did make a comment that there was
18 a black male with red shorts, didn't he?

19 **Q. No, that's you. That's your unit, P145.**

20 In fact, if you look at the earlier
21 description, the black male had a gray tank top and long
22 black shorts.

23 MS. COX: Objection; form.

24 I'm not sure if that's a question.

25 **Q. (By Mr. Cochran) Right?**

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1 MS. COX: The same objection; form.

2 **Q. (By Mr. Cochran) 229, the very first page, the**
3 **second entry down, system time 20:34:26.**

4 MS. COX: And the question is?

5 **Q. (By Mr. Cochran) He realizes that within**
6 **Exhibit 5, the CAD of July 12th of 2020, the only person**
7 **that identified Zim Contreraz's clothing as black tank**
8 **top, red shorts was P145, not Joel Cheney, according to**
9 **this CAD Incident Inquiry of July 12th of 2020.**

10 MS. COX: Okay. The objection is form.

11 A. I'm looking for the part on here where it
12 describes the clothing. I'm sorry.

13 **Q. Sure. No. 2 on Page 1.**

14 A. No, no, that when we listed -- not the Dupont
15 officer. When you are stating that I -- that Paul 145
16 described the clothing, I'm looking for that part.

17 **Q. Sure. 233, Page 233, the first event remark is**
18 **at 21:12:31. P145 comments black male, red shorts.**

19 **And then if you go five entries down --**

20 A. Wait. You are correct. Yes, so the only entry
21 listing Mr. Contreraz's clothing is by either myself or
22 Officer Levitt. I don't recall which one of us gave
23 that information.

24 **Q. And both Officer Cheney, according to this, and**
25 **Officer Franco appear to be assisting P145 in the**

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1 **detention of what ultimately turned out to be Zim**
2 **Contreraz, right?**

3 MS. COX: Objection; form.

4 A. The CAD states that they assisted us. But if
5 you go chronologically, we assisted -- we assisted
6 Officer Cheney first, and then Officer Cheney is removed
7 from the call and then put back on it immediately. That
8 does not mean he is assisting us.

9 When we initially attached ourselves to the
10 call, we were assisting Officer Cheney, and that is
11 listed chronologically.

12 **Q. It sure looks like, Officer Bain, that P145 was**
13 **in fact looking for the suspects that were identified at**
14 **21:34:26 on July 12th of 2020, but that the individual**
15 **identified by P145 did not match those identifiers that**
16 **were previously sent out, right?**

17 MS. COX: Objection; form.

18 A. Again, we did not make contact with
19 Mr. Contreraz. Officer Cheney made contact. We were
20 backing Officer Cheney.

21 And as I have stated, people often shed
22 clothing to conceal themselves or to change their
23 appearance when they are committing crimes.

24 **Q. That's not what this document says, right?**
25 **This document says P145 is the one that was identifying**

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1 **a black male with red shorts and a black tank top,**
2 **right?**

3 MS. COX: Objection; form.

4 And as soon as he answers, I would like to take
5 a break.

6 THE WITNESS: Okay.

7 MR. COCHRAN: I just want to finish up this
8 line of questioning.

9 MS. COX: Yeah, I need a break. So can you
10 answer the question?

11 A. Okay. Yes. So in my experience, my 15, 17
12 years of experience as a law enforcement officer, if
13 Officer Cheney is making first contact, his mind is not
14 going to be to get on the radio and give a color
15 description of the person he's contacting instead of
16 contacting the person, detaining them to make the scene
17 -- himself and the suspect and the scene safe.

18 So if the officer responds -- if an officer
19 responds quick enough, he can give the description of
20 the person of the clothing of the person they are
21 detaining for the officers who are contacting victims.

22 It does not mean the person giving the clothing
23 description is the person making the contact. We did
24 not make initial contact with Mr. Contreraz.

25 **Q. (By Mr. Cochran) The only thing that matched**

22 (Pages 85 to 88)

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1 the description was the fact that Zim Contreraz was a
2 black man in Wright Park, correct?

3 MS. COX: Objection; form.

4 Answer if you can, and then I need to take a
5 break.

6 A. Yes.

7 THE VIDEOGRAPHER: Oh. Going off the record
8 at 12:06.

9 (Recess was taken from 12:06 p.m. to
10 12:47 p.m.)

11 THE VIDEOGRAPHER: We're back on the record
12 at 12:47.

13 Q. (By Mr. Cochran) Officer Bain, we left when we
14 were talking about the Cad Incident Inquiry, which has
15 been marked as Exhibit 5.

16 A. Okay.

17 Q. Do you recall anything else that you did or
18 Training Officer Levitt did at Wright Park before you
19 left?

20 A. No.

21 Q. Okay. It's my understanding -- well, strike
22 that.

23 As a part of your training, are you familiar
24 with the use of force policy for the Tacoma Police
25 Department?

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1 A. Yes, I am.

2 Q. Okay. I will submit to you that this has been
3 provided to me. I'm going to ask Barbara to mark it as
4 Exhibit 6.

5 (Exhibit No. 6 marked.)

6 Q. (By Mr. Cochran) If you would, take a look at
7 this. And this was provided by the City of Tacoma in
8 response to, again, my written questions to the city
9 regarding this lawsuit.

10 It's my understanding that what's in front of
11 you marked as Exhibit 6 is the Tacoma Police
12 Department's use of force policy, it's listed as
13 Subsection 3.1, that was in effect on July 12th of 2020.

14 Have you seen this use of force policy as it
15 exists in front of you recently?

16 A. Yes.

17 Q. Okay. And you are familiar with the one that
18 actually has former Chief Donald Ramsdel's name on it?

19 A. Yes.

20 Q. Okay. Can you confirm that what's in front of
21 you as Exhibit 6 to the best of your understanding is
22 the use of force policy that was in effect for the
23 Tacoma Police Department on July 12th of 2020?

24 A. I don't have every word memorized, but it does
25 look correct.

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1 Q. It appears to be what you were working off of
2 at the time?

3 A. Yes, sir.

4 Q. Okay. And did you feel that it was to the best
5 of your understanding your job as a Tacoma police
6 officer back in July of 2020 to know the use of force
7 policy and to implement that policy when you were out on
8 patrol?

9 A. Yes.

10 Q. With regard to your testimony thus far, how
11 would you characterize your interaction with the
12 plaintiff, Mr. Contreraz, on July 12th of 2020?

13 MS. COX: Objection; form.

14 Answer if you can.

15 Q. (By Mr. Cochran) And when I ask how would you
16 characterize that, I'm asking within the force model or
17 use of force model as it's sometimes called, and it
18 exists on Page 1 of 12, again, marked for identification
19 in your deposition as No. 6. It begins on Contreraz
20 Page 518.

21 A. Are you asking what part of the model were we
22 at during the contact?

23 Q. Correct.

24 So you had contact with Mr. Contreraz, correct?

25 A. Yes.

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1 Q. You've testified that you put your hands on the
2 handcuffs that he was in, correct?

3 A. Correct.

4 Q. Is handcuffing an individual considered a use
5 of force?

6 A. At the time, it was not.

7 Q. But is it now?

8 A. I don't believe so it is now.

9 Q. Okay. Are there any substantive changes that
10 you are aware of from July of 2020 to today that are
11 significantly different than the policy that's in front
12 of us right now?

13 A. No.

14 Q. Okay. So how would you characterize your
15 interaction with Zimmeri Contreraz on July 12th of 2020?

16 MS. COX: Objection; form.

17 Q. (By Mr. Cochran) Again, within the use of
18 force model.

19 MS. COX: Same objection; form.

20 Answer if you can.

21 A. In my training and experience, my understanding
22 of the use of force model, Mr. Contreraz was passive
23 resistant, and my reaction was that -- to rise to a
24 level of contact controls with Mr. Contreraz to get him
25 to cooperate voluntarily.

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1 Q. (By Mr. Cochran) Okay. And that again was
2 you, as you testified, putting your hands -- you said
3 you were to the left of him? No, you were to the right
4 of him?

5 A. Correct.

6 Q. And you put your left nondominant hand on the
7 handcuffs and applied pressure to get him to sit back
8 down on the table; is that right?

9 A. Correct.

10 Q. Okay. If you flip the page and you go to it's
11 Page 11 of 12 of this document. And, again, it is front
12 and back. The identifier is Contreraz 528. And if you
13 go to B, the Use of Force Reporting Instructions, it
14 reads, "The use of force reporting is intended to
15 quantify applications of force and provide specific
16 training correction for those tools, tactics and
17 techniques which are applied unsuccessfully or
18 incorrectly. The reporting is also intended to allow
19 supervisors an opportunity to identify training issues
20 and assess skills and tools."

21 Under that, it says, "A reportable use of force
22 is defined as any incident where, under color of
23 authority, a Tacoma Police Officer employs a contact
24 control," and then it says where injury occurs, "tool
25 (excluding Draw and Direct) or any physical force to:

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1 do their own use of force reports.

2 Q. Okay. Did you indicate to anyone that there
3 was a reportable use of force on July 12th of 2020?

4 A. I would not have used the word reportable use
5 of force. I would have described the incident to my
6 sergeant describing my actions and the actions of the
7 suspect that we had contacted and then collaborate to
8 decide whether a reasonable -- a report would be needed
9 to document the use of force or not.

10 Q. Okay. In this case, would you agree that you
11 were trying to compel Mr. Contreraz, who you've
12 described as a noncompliant person, to obey with the
13 direction?

14 A. Correct.

15 Q. Okay. To whom within the Tacoma Police
16 Department did you describe your interaction with
17 Mr. Contreraz on July 12th of 2020?

18 A. Sergeant Jepson.

19 Q. Was it your expectation that Sergeant Jepson
20 would have created a reportable use of force report?

21 MS. COX: Objection; form.

22 Answer if you can.

23 A. I can't answer what Sergeant Jepson would or
24 would not have done.

25 Q. (By Mr. Cochran) And specifically how did you

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1 Compel a non-compliant person to obey their direction,
2 overcome active resistance during an arrest or
3 detention, defend self or another from an aggressive
4 action by a suspect.

5 "Officers who employ a reportable use of force
6 shall specify those actions within the narrative section
7 of the report. Additionally, if the officer wishes to
8 (and if warranted) make specific training
9 recommendations regarding tool effectiveness and
10 training proficiency, the Officer should collaborate
11 with the supervisor so the aforementioned can be
12 included in the comments section of the Blue Team
13 entry."

14 Did I read that correctly?

15 A. Yes.

16 Q. Okay. In this particular case, you used a
17 contract -- contact control; is that right?

18 A. Correct.

19 Q. You did not report this as a use of force
20 however, right?

21 A. What do you mean I did not report it as a use
22 of force?

23 Q. You did not -- you never made a reportable use
24 of force or use of force report, did you?

25 A. I don't -- at the time, patrol officers did not

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1 tell Sergeant Jepson that you had used a contact control
2 which was designed to compel a noncompliant person to
3 obey direction?

4 MS. COX: Objection; form.

5 A. To my recollection, I believe I called him via
6 telephone, contacted him via telephone.

7 Q. (By Mr. Cochran) During that telephone call,
8 did you tell him that Mr. Contreraz was allegedly highly
9 intoxicated?

10 A. To my recollection, I believe I did.

11 Q. Based on your training with regard to DUIs, you
12 knew that including whether or not someone was highly
13 intoxicated was important to any of your report writing,
14 correct?

15 A. Yep. I'm sorry.

16 MS. COX: Objection; form.

17 Q. (By Mr. Cochran) And it was important to any
18 narrative that you gave to any supervisor as well,
19 right?

20 MS. COX: Same objection.

21 A. Correct.

22 Q. (By Mr. Cochran) The fact that Zim Contreraz,
23 Plaintiff Contreraz, was highly intoxicated during the
24 interaction with you and other officers on July 12th of
25 2020 at Wright Park was an important thing that you knew

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Officer Christopher Bain

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that needed to be included in any narrative --

MS. COX: Objection.

Q. (By Mr. Cochran) -- created by you, correct?

MS. COX: Objection; form.

A. Correct.

Q. (By Mr. Cochran) Let's take a look at --

MR. COCHRAN: I only have one copy of these, so I don't know how you guys want to enter what has been produced to me today.

MS. COX: What is it?

MR. COCHRAN: It's the two FIR reports. There's 2019.

MS. COX: A .1 and a .2 for a total of five pages. And the .2 appears to include a screenshot of the -- I think it's the RMS.

MR. COCHRAN: I just have four pages.

MS. COX: What is your last page on the .2? Because it's not part of the report.

MR. COCHRAN: 834. Page 2 of 2.

MS. COX: Yep. Why don't you take a look at it, and then you can use that if you would like.

MR. COCHRAN: And this has five pages?

MS. COX: No, I had something attached to the back.

MR. COCHRAN: Okay. Well, I have what you

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"I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct," and that's signed by Gary Roberts in Pierce County on November 13th of 2023."

I will hand you that.

Separately I will ask that report 2019401679.2, again, there's two pages, and it appears to be again printed out by Gary Roberts on November 13th, 2023, I will ask that that be marked as Exhibit 8.

(Exhibit No. 8 marked.)

Q. (By Mr. Cochran) Officer Bain, looking at Exhibits 7 and 8 and specifically Exhibit No. 8, can you describe for the record what Exhibit 8 is?

A. It is an Enforcer Supplemental Report that I completed on the date of the event, 7/12/2020.

Q. Is Exhibit 7 then, is that a report that you also created?

A. It is not.

Q. Okay. So with regard to Exhibit 8, what is the supplemental report supplementing?

A. It was our -- if we were to supplement a report, it would be our understanding that another officer would have wrote a general report. And since Officer Cheney was the main contact, it would have been our assumption, and I don't recall whether we had a

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gave to me earlier. I just want to be able to enter it as an exhibit.

MS. COX: You can use that because I have another one.

MR. COCHRAN: Perfect. Okay. I'm going to ask that these be marked separately.

A. Am I still using that or can I put this aside?

Q. (By Mr. Cochran) Just keep that to the side if you would.

MR. COCHRAN: And I will ask Barbara to mark .1.

(Exhibit No. 7 marked.)

Q. (By Mr. Cochran) So our court reporter has marked Exhibit 7, and that is Incident No. 2019401679.1, and that consists of two pages. They are printed on November 13th, 2023, at 5:31 p.m. Printed by Gary -- or Roberts, Gary J. That has an entered on date of November 11th, 2023, and an approved on date of 11/13/2023 entered by T, as in Tom, 74975 - Roberts, Gary J., and approved by it says Automated Policy.

On the second page, the narrative reads, "This report is being generated by Internal Affairs as there were Linkless Supplemental Reports written regarding this but no General Port was ever -- Report, excuse me, was ever created for them to attach to:

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conversation about it or not, but it would have been our assumption that Officer Cheney would have written the general report.

Q. And when you say "our assumption," who are you speaking of?

A. Any other officer that would have been there that would have written -- I'm sorry -- would have written a supplemental report. I was speaking in generalities. My apologies.

It would have been my assumption that Officer Cheney would have written a .1, a general report.

Q. Okay. That assumption assumes that there is an incident number, in this case 201940167, and then this is .2, right?

MS. COX: Correction. I think you left one digit off the case report.

Q. (By Mr. Cochran) I'm sorry. Let me say it again. Incident No. 2019401679. Did I read that correctly?

A. That's correct.

Q. Okay. So where did you get that incident number in order to create a .2 supplemental report?

A. Incident numbers are created by South Sound 911 dispatch.

Q. Okay. And how did you know how to link to that

25 (Pages 97 to 100)

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1 **incident number from South Sound 911 dispatch?**

2 MS. COX: Objection; form.

3 Answer if you can.

4 A. When we're on a call, we're attached to --
5 we're put on a CAD call, our CAD call and Enforcer
6 report writing systems talk to each other.

7 So if I were to open the Enforcer program and
8 click on supplemental report to create a supplemental
9 report, I would click on a box to create the report, and
10 it would say -- it would give me a list of calls that
11 I've been on given the parameters -- search parameters
12 that I would enter, 2, 3, 4, 5 days, however many days I
13 had on there, and I could just click on that incident,
14 and it would pull over -- pull over the incident
15 information into the Enforcer report such as date, time,
16 stuff like that.

17 **Q. Okay. So I'm going to refer you back to**
18 **Exhibit No. 5. Yep. Exhibit No. 5, which is the CAD**
19 **incident query of July 12th of 2020.**

20 **There's a complaint number in bold in the upper**
21 **left, and the complaint number on Exhibit No. 5, the CAD**
22 **Incident Inquiry, is 2019401679, correct?**

23 A. Yep.

24 **Q. And that's the corresponding complaint number**
25 **to the FIR Tacoma Police Department Supplemental Report**

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1 would be omitted. It would have date, time, location,
2 stuff that is in the CAD. Some of it is pulled over,
3 some of it, it just doesn't translate. That's how those
4 two communicate with each other.

5 **Q. So let me ask you more physical characteristics**
6 **of how this was created.**

7 **Do you know where you were located? Were you**
8 **in your patrol car or were you back at the substation**
9 **when you created what's been marked as Exhibit 8?**

10 MS. COX: Objection; form.

11 Answer if you can.

12 A. I don't recall. But it would have been likely
13 that I would have got -- myself and Officer Levitt would
14 have gone back to the substation.

15 **Q. (By Mr. Cochran) Okay. Are there ever**
16 **instances where you fill out an incident like the Tacoma**
17 **Police Department supplemental report which is**
18 **identified as Exhibit No. 8 inside a patrol unit?**

19 A. Yes, that's very common. And let me further
20 explain, it's most likely done on the same computer. If
21 we have a laptop in our cars. We can remove it and take
22 it into the substation, plug it into a power source so i
23 doesn't die.

24 When I write a report, I do it on my laptop. I
25 almost never write a report on a desktop computer at a

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1 **which is in front of you as Exhibit No. 8, correct?**

2 A. Yep.

3 **Q. And so explain to me, and understand that I**
4 **don't know the computer system for the Tacoma Police**
5 **Department or for South Sound 911, how would you**
6 **manually go about linking the complaint number in the**
7 **Cad Incident Inquiry in Exhibit No. 5 to the FIR Tacoma**
8 **Police Department Supplemental Report in Exhibit No. 8?**

9 A. I'm sorry. I thought I just did. We have a
10 CAD system, which creates the CAD calls and information
11 that's created by dispatch. They create the incident.
12 If I were to go out here and contact somebody, dispatch
13 would create the incident and location, date, time, my
14 information.

15 That CAD system program communicates with our
16 Enforcer report writing system. So when I open the
17 Enforcer system and I say -- either click on a general
18 report if I'm going to do a general or a supplemental
19 report, I would click on -- click on that key to create
20 one of those, and then it would give me a list of calls.

21 If I just want to do the ones I've been on that
22 day, I can -- there's a box where I can type in the
23 incident number, and it would pull information from CAD
24 and put it and start to create the Enforcer report. It
25 would have some information in there but a lot of it

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1 substation. So it would have been done on the same
2 computer.

3 **Q. Okay.**

4 A. If that helps clarify.

5 **Q. It does.**

6 **So is it your expectation that you would have**
7 **been able to pull up Cad Incident Inquiry with the same**
8 **complaint number, which is identified as Exhibit 5,**
9 **click on a hyperlink maybe on that number, which is the**
10 **complaint number in the top left of No. 5, and then it**
11 **would subsequently create the supplemental report which**
12 **is exhibited in No. 8? Is that how it's done?**

13 A. I can try to explain it better.

14 **Q. Yeah, because here's what I'm having trouble**
15 **with is you say that you were able to pull up the CAD**
16 **incident inquiry from that evening; is that correct?**

17 A. When we log into our CAD program at the
18 beginning of every shift, it's -- it's a -- it's a
19 window that can always be up or we can minimize it when
20 we're logged in where we have activity within the CAD.

21 **Q. Right.**

22 A. You know, we get put on a call, it's already on
23 our computer. It's a program that is running, so that
24 information is already there. And then this type of
25 program is our Enforcer report writing program -- two

26 (Pages 101 to 104)

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1 separate programs, so I don't need to pull up CAD. It's
2 already -- the information is already there.

3 **Q. So when you want to create a supplemental**
4 **report, what do you type in? You said that the number**
5 **at the top of No. 8 has already been generated for you.**

6 **So the incident number, and, again, it has that**
7 **same complaint number, which is on the CAD incident**
8 **inquiry, that number automatically populates, right?**

9 A. It can.

10 **Q. Okay. Or you can copy and paste it in there?**

11 A. Or type in the incident number, yes.

12 **Q. Okay. So it's your expectation that with**
13 **regard to Exhibit No. 8, you either had it auto**
14 **populated or you typed it in, typed in the number; is**
15 **that right?**

16 A. If I'm -- my common practice, and I don't
17 recall exactly what I did that night, but my common
18 practice is to open up the program for Enforcer. I
19 would have clicked on the supplemental report link,
20 which would have brought me to a window where I could
21 either enter in the case number directly or it auto
22 populates the calls I've been on within the recent field
23 that I have it limited to of however many days I have it
24 limited to. I try to keep it short so it doesn't get
25 too long and the program doesn't bog down.

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1 So I would have clicked on that call and then
2 would have put create report, and then it goes from the
3 window, and it starts to create what looks like this on
4 a computer screen.

5 **Q. And just so Barbara's record is clear, you are**
6 **holding up --**

7 A. My report. It looks kind of like this but in
8 separate windows with separate tabs.

9 **Q. I see.**

10 **And then when you finalize that report, where**
11 **does the report go?**

12 A. When I click submit, if it's a supplemental
13 report, from my experience in dealing with supplemental
14 reports, it hangs out into whatever sphere, electronic
15 universe that saves them, whatever cloud system saves
16 these reports until it can attach itself to a general .1
17 report.

18 So if I write a supplemental report and there's
19 never ever a .1 report, it stays there until however
20 long the system saves that information. And I don't
21 have that information. That's a South Sound 911
22 question.

23 **Q. So based on your experience, if one were to**
24 **simply type in that same incident number which is**
25 **referenced as a complaint number in the Cad Incident**

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1 **Inquiry, is it your understanding that your FIR, your**
2 **field incident report, should have been available?**

3 A. When -- if it doesn't attach itself to a call,
4 there's nothing that we're going to be able to see.
5 From my experience, because I have accidentally created
6 supplemental reports when I should have created a .1.
7 And in order to remedy that, I have to call the South
8 Sound 911 help desk.

9 I've tried to look up those in the past using
10 the resources that I have in my computer, and I can't
11 see them once I've submitted the supplemental report if
12 there's no general report to attach itself to. So I
13 have to call south Sound 911 help, the number that they
14 give us. They say, yes, we can see this. We can push
15 it back. We can delete it, and you can just start all
16 over again. And then -- but it's nothing that I can
17 see.

18 **Q. In this particular case, and I don't -- I'm not**
19 **asking for what you've talked about with either Ms. Cox**
20 **or Ms. Taylor, how was this report printed out by Gary**
21 **Roberts? What's your understanding?**

22 MS. COX: Objection; form.

23 Answer if you can.

24 A. I don't know.

25 **Q. (By Mr. Cochran) Did you -- was it your**

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1 **understanding before today's deposition that you had**
2 **created a supplemental report?**

3 A. I didn't -- I actually did not have a
4 recollection of creating a supplemental report.

5 **Q. Okay. So the first time that you saw that you**
6 **had created a supplemental report was sometime in the**
7 **days prior to your deposition; is that right?**

8 A. So last night, I got an email about this
9 incident. It was late last night. I was -- I was
10 reviewing some of the previous calls that I had that
11 were 15 years ago because they are well beyond my
12 memory.

13 And so -- and then I got an email on my work
14 computer saying that, you know, you need to correct this
15 report. I was, like, well, that's from years ago. I
16 don't know why that's up there, so I dismissed it.

17 When I got in this morning, I was made aware of
18 this particular report about 9:30 this morning.

19 **Q. So let me walk you back just a minute. You got**
20 **an email when?**

21 A. Last night.

22 **Q. You got an email last night that said this**
23 **report exists. You need to dismiss it?**

24 A. No, it said fix it. I need to do some type of
25 fixing before it can be approved. And I saw -- it just

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1 had the case number. It didn't have any names or
2 identifier -- or anything identifying it with this
3 incident. I didn't recognize the case number, so I
4 dismissed the email. I was going to dismiss it until I
5 got in this morning because I had more important things
6 to do than worry about a case from three years ago, and
7 I didn't recognize it from this incident.

8 **Q. Okay.**

9 A. Because I didn't have the case number
10 memorized.

11 **Q. Okay. So that was the first time you had ever**
12 **gotten an email that said when you need to fix this?**

13 A. Yes.

14 And then when I got in this morning is when I
15 was made aware that that same email had to do with this
16 supplemental report that I had written on that date that
17 I forgot I had written.

18 **Q. What are the chances that that happens just**
19 **before your deposition? Do you get emails like this all**
20 **the time?**

21 MS. COX: Objection; form.

22 And if you want some insight off record, I can
23 help you with that.

24 MR. COCHRAN: No, not right now.

25 A. The first time I've ever gotten an email like

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1 A. I would have labeled it Tacoma General because
2 in the CAD it said Mary Bridge Children's Hospital, the
3 same building, and I often refer to that same building
4 as Tacoma General Hospital. That's why I would have
5 made that notation because the incident report was from
6 -- was at Mary Bridge Hospital.

7 **Q. But you didn't respond and neither did Erik**
8 **Levitt to either Tacoma General Hospital or Mary Bridge,**
9 **did you?**

10 A. No.

11 **Q. And in fact, I will have you take a look at**
12 **this Cad Incident Inquiry that has a different complaint**
13 **number.**

14 (Exhibit No. 9 marked.)

15 **Q. (By Mr. Cochran) And, Officer Bain, I'm**
16 **handing you what's been marked now for identification as**
17 **Exhibit 9. And I will represent to you that this is a**
18 **document that was made available by South Sound 911 and**
19 **through the City of Tacoma. It's got markings at the**
20 **bottom Contreraz 235.**

21 The Cad Incident Inquiry here has a complaint
22 number 2019401738. But below it in Cross Referenced
23 Events, it's about halfway down, you'll see Complaint
24 No. 2019401679. Do you see that?

25 A. I do.

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1 this.

2 **Q. (By Mr. Cochran) Okay. Let's go to the**
3 **narrative in what is your -- and you recognize you've**
4 **looked at this. You recognize this as being a narrative**
5 **that you, Christopher Bain, submitted to the Tacoma**
6 **Police Department computer system on or about July 12th**
7 **of 2020; is that right?**

8 A. That is correct.

9 **Q. You didn't have a recollection of it before.**
10 **But after seeing it, you recall making this report?**

11 A. Yes.

12 **Q. It says, "On 7-12-20 at 2054 hours, Officer E.**
13 **Levitt and myself were in full duty uniform in a two man**
14 **car when we responded to Tacoma General Hospital to**
15 **assist Officer Cheney with an intimidation with a**
16 **weapon." Let's stop there for a moment.**

17 **Did you see anywhere in Exhibit 4 that you and**
18 **Officer Levitt actually responded to Tacoma General**
19 **Hospital?**

20 A. 4 or 5?

21 **Q. No. 5. Did I say 4? I apologize. No. 5.**

22 A. No.

23 **Q. Okay. So it didn't exist within the Cad**
24 **Incident Inquiry that you and Erik Levitt had responded**
25 **to Tacoma General Hospital, right?**

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1 **Q. Okay. And you would agree with me that based**
2 **on the call received time, which is 7/12 of 2020, that's**
3 **the date, at 2104, that the Cad Incident Inquiry in**
4 **Exhibit No. 9 is related to the Cad Incident Inquiry in**
5 **Exhibit No. 5, correct?**

6 MS. COX: Objection; form.

7 Answer if you can.

8 A. It doesn't necessarily mean it's related, but
9 it is cross referenced.

10 **Q. (By Mr. Cochran) Here we've got some sort of**
11 **report of a missing 13 year old. Joel Cheney appears to**
12 **be the officer that was responding. Do you see that?**

13 A. I do.

14 **Q. Okay.**

15 **So in the supplemental report that you made at**
16 **or about the end of your call at Wright Park on 7/12 of**
17 **20, July 12th of '20, it's incorrectly -- it's incorrect**
18 **in that it states that you and Officer E. Levitt**
19 **responded to Tacoma General Hospital to assist Officer**
20 **Cheney, correct?**

21 A. Sometimes we -- I won't say it's incorrect. If
22 we are initially going to a certain location, we would
23 document that. And if that location changes to Wright
24 Park, which is right next to TG, that would be
25 documented as well. Just because in the beginning it

28 (Pages 109 to 112)

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will say we responded to, it doesn't mean that we actually arrived at that location. We could be responding to one location and be diverted to another based on the circumstances of the incident.

Q. Okay. Well, we'll get to that in a moment.

But at least nowhere that you have seen in Exhibit 5 or Exhibit 9 does it say that you and Officer Levitt actually went to Tacoma General Hospital, right?

MS. COX: Objection; form.

A. We did not go to Tacoma General Hospital. That is correct.

Q. (By Mr. Cochran) It says, "Officer Cheney had contacted the victim and said that a" -- I believe that's black male, it says, "B/M with a muscular build, who was wearing a do rag, black tank top, and dirty white shoes pulled a knife on him and a white male who had red hair and was wearing a black T-shirt and black shorts pulled a gun on him at the basketball courts at Wright Park."

Did I read that correctly?

A. Yes, you did.

Q. Okay. You wrote a black male with a muscular build who was wearing a do rag, a black tank top and dirty white shoes. First of all, did you see anywhere in Exhibit 5 a mention of dirty white shoes?

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Q. (By Mr. Cochran) On the first page of No. 5, again, the Cad Incident Inquiry, the black male is described as having a gray tank top and long black shorts, but that's not what you put in the report, correct?

A. I did not include the shorts in the description in my narrative.

Q. Your narrative in Exhibit 8, correct?

A. Correct.

Q. And in fact, there is nowhere within Exhibit No. 5, the Cad Incident Inquiry of July 12th of 2020, where it's ever said that the black male who was the alleged suspect carried a knife had a black tank top, correct?

A. I don't -- I don't see that in the CAD call at all. That could have been information that we learned on scene, but it wasn't necessarily in the CAD. It could have been relayed via police radio.

Q. Really important though to document that, correct?

A. It could --

MS. COX: Objection; form.

Answer if you can. I think you answered. I didn't hear it.

A. It could be, correct.

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A. I don't recall seeing anything on there that said dirty white shoes, no.

Q. It's an important detail that you put in your supplemental report marked as Exhibit 8 but was nowhere to be found in the Cad Incident Inquiry, correct?

MS. COX: Objection; form.

A. That's correct.

Q. (By Mr. Cochran) Here you've identified the black male as wearing a black tank top and dirty white shoes and then the white male as wearing a black T-shirt and black shorts.

Is that consistent with Exhibit No. 5, the Cad Incident Inquiry?

MS. COX: Objection; form.

Answer if you can.

A. Information that is in CAD often changes while we're on scene, and we wouldn't necessarily enter information into CAD and instead document it in the report. It would be redundant to document it in two ways, in CAD and in an official Enforcer report.

So instead of entering that information in CAD, we often include more detailed information in the Enforcer report. So information that might not be in CAD will most definitely be included in an Enforcer report.

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Q. (By Mr. Cochran) And based on past disciplinary actions, you know how important it is to document everything in reports, correct?

MS. COX: Objection; form.

A. Yes, I do. I'm also human and might leave out something in a typo. And I have also said that I often write reports in Word and cut and paste, and sometimes the stuff doesn't -- might not make it over or I will make a correction in a report, and I proofread my own reports. Sometimes I do miss some things.

Q. (By Mr. Cochran) Did you open a Word document to create this narrative to the best of your knowledge?

A. To the best of my knowledge. I don't recall if I did, but it would have been my common practice.

Q. Where would you keep that Word document if you did?

A. I don't -- I don't save the Word documents. I type it in Word for, as I said before, spelling and grammar, and then I cut and paste it over to Enforcer, and that's where I save it.

Q. Ultimately do you keep a draft of those Word documents that you create?

A. No.

Q. Where do they go? You just hit don't save, and then they disappear wherever Word is stored; is that

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1 right?

2 MS. COX: Objection; form.

3 A. Correct.

4 Q. (By Mr. Cochran) The next portion, if we begin
5 the second paragraph of Exhibit No. 8, the Tacoma Police
6 Department supplemental report produced just prior to
7 your deposition, it reads, "We went to Wright Park to
8 conduct an area check for the suspects."

9 Would you agree with me that that would lead
10 the reader to believe that you left Tacoma General
11 Hospital and then went to Wright Park?

12 A. I couldn't tell you what a reader would
13 believe.

14 Q. Did you mean it to be that you were at Tacoma
15 General where you responded, and then you went to Wright
16 Park?

17 MS. COX: Objection; form.

18 A. No, because I never indicated in my report that
19 I arrived at Tacoma General.

20 Q. (By Mr. Cochran) So responded to Tacoma
21 General does not mean that you actually arrived there;
22 is that right?

23 MS. COX: Objection; form.

24 A. Correct.

25 Q. (By Mr. Cochran) At 21 -- oh, sorry. Yeah,

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1 wearing a black tank top and black hat and white shoes
2 sitting at a picnic table on the east side of the park
3 near the observatory at South 3rd and G Street.
4 Correct?

5 A. That's what the report says. That's correct.

6 Q. The report then says, and, again, this report
7 according to your testimony was made on that same
8 evening, right, on July 12th of 2020?

9 A. Correct. It would be a better representation
10 of what happened than my memory would be.

11 Q. Okay. "We got out to contact the male and were
12 joined by multiple other officers." That's not what you
13 testified previously, right? Before you had said that
14 Officer Cheney already had that individual either in
15 custody or detained and you were there just to help him,
16 right?

17 A. That was -- that was my recollection of the
18 events before reviewing this report.

19 Q. But you read this report before you testified
20 today, right?

21 A. I did not actually read this report before I
22 testified. I saw that it existed. I did not read it.

23 Q. "Officer Levitt assisted in placing the male,
24 who refused to identify himself, into double handcuffs."
25 Do you recall that?

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1 "At 2105 hours, Officer Levitt located a muscular build
2 black male who was wearing a black tank top and a black
3 hat and white shoes sitting at a picnic table on the
4 east side of the park near the observatory at South 3rd
5 Street -- 3rd and G Street."

6 Did I read that correctly?

7 A. You did.

8 Q. Okay. Before you said that you were not
9 concerned about what individuals looked like because you
10 were there to assist Officer Cheney, correct?

11 A. That is not correct. Again, I will correct you
12 and say that I was -- I had never said that that was not
13 concern. I would appreciate if you would stop saying
14 that.

15 Q. Okay. That was not a part of what you were
16 looking for, I think, is the way that you said it
17 previously; is that right?

18 A. Yes. Thank you.

19 Q. Okay. So despite the fact that you were not
20 looking for any individual -- any particular individual
21 because you were there to assist Officer Cheney, right?

22 A. That was to the best of my recollection is what
23 we were there doing, yes.

24 Q. Okay. Here it says that Officer Levitt
25 actually located a muscular build black male who was

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1 A. I don't recall that happening. If I had, I
2 would have testified to that before. But if it's in
3 here, it would have been a better recollection -- it
4 would have been a better account of the events than my
5 memory would be.

6 Q. "The male immediately became argumentative and
7 kept asking why he was put in handcuffs." Did I read
8 that correctly?

9 A. Yep.

10 Q. "Officer Cheney attempted to explain to him
11 many times why he was being detained, but he refused to
12 listen." Did I read that correctly?

13 A. Yes.

14 Q. "He just kept talking over the officers. I
15 attempted to engage him in conversation, but he kept
16 talking over me. So I tried to first calmly talk to
17 him, then attempted to control the conversation and talk
18 over him, but he refused to listen."

19 Did I read that correctly?

20 A. Yes.

21 Q. So in the narrative that you allegedly wrote on
22 the day of the incident, you weren't just there
23 assisting Officer Cheney, but you were actually engaged
24 in conversation with Mr. Contreraz, correct?

25 MS. COX: Objection; form.

30 (Pages 117 to 120)

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1 Go ahead.

2 A. Correct, I was engaged in conversation.

3 Q. (By Mr. Cochran) You say next, "In between his
4 rants, he would blankly stare at me, then would start
5 ranting again claiming that we were only detaining him
6 because he was black. He was sitting on the edge of the
7 table and started to stand up."

8 Did I read that correctly?

9 A. Yes.

10 Q. "Either Officer Branham or Officer Cheney told
11 him to sit back down. He then took a step forward and
12 started to lean in towards Officer Branham." Did I read
13 that correctly?

14 A. Yes.

15 Q. "I reacted by grabbing his handcuffs and
16 applying equal rear pressure to get him to sit back down
17 the table." Did I read that correctly?

18 A. Yes.

19 Q. Is that what you would consider a contact
20 control?

21 A. Yes.

22 Q. "The pressure worked, and he sat back down. At
23 no time did he make any complaints of pain from me
24 grabbing his -- the cuffs. He did not make any noise
25 that would indicate he had been in pain." Did I read

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1 officer. So it did in fact work. As long as he's
2 sitting, he could be as belligerent as possible.

3 Q. The next portion reads, "He returned a few
4 minutes later and told the male that he was unable to
5 contact the victim so he would be releasing him." Did I
6 read that correctly?

7 A. Yes.

8 Q. Is that typical procedure based on your
9 experience at the Tacoma Police Department, if you are
10 simply unable to contact a victim, that you would let a
11 possible suspect leave the area?

12 MS. COX: Objection; form.

13 Answer if you can.

14 A. If we can not contact a victim, we do not have
15 a crime. There's no reason to further detain somebody
16 and burden them with being in police custody if we don't
17 have a victim to say whether they were the person who
18 assaulted them or not or committed the crime.

19 Q. (By Mr. Cochran) Not true in this case though,
20 right? Because we've already seen on the CAD No. 5 that
21 there was probable cause to arrest, correct?

22 MS. COX: Objection; form.

23 Answer if you can.

24 A. Whoever had contacted the victims said that
25 there was PC to arrest. But if those victims are no

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1 that correctly?

2 A. Yes.

3 Q. "Officer Cheney told the male that he was going
4 to get ahold of the victim to see if he was the suspect
5 we were looking for.

6 "Officer Cheney walked to his patrol vehicle to
7 call the victim. And while he did -- while he did so,
8 the male kept arguing and was only getting more
9 belligerent." Did I read that correctly?

10 A. Yes.

11 Q. What did you do, Officer Bain, if anything,
12 when you saw that your contact control had in fact not
13 worked and according to you and your narrative that Zim
14 Contreraz was becoming more belligerent?

15 MS. COX: Objection; form.

16 A. The contact control actually did work because I
17 was more concerned about Mr. Contreraz sitting than I
18 was about him talking. I'm not concerned about somebody
19 talking. I'm concerned about somebody either running
20 away when they are being -- when they are detained or
21 making motions towards officers to hurt them. I'm not
22 concerned about -- about him talking.

23 Belligerent is more of a reference to his
24 speech than it is about -- about whether he's getting up
25 and trying to walk away or run away or assault another

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1 longer able to be contacted, then they could walk away,
2 they could say that they don't want to be a victim. And
3 if we're not able to further contact them, then we're
4 not able to keep them in custody and book them in a
5 crime. We don't have a victim.

6 Q. Officer Bain, you are not testifying here under
7 oath today that simply being unable to get ahold of a
8 victim at that particular time would mean that probable
9 cause did not exist anymore and that it would be okay to
10 release a suspect? Are you testifying as to that?

11 MS. COX: Objection; form.

12 A. Yes. If the victim does -- no longer wants to
13 be a victim and doesn't want to be contacted, we no
14 longer have a crime.

15 Q. (By Mr. Cochran) That's not what this says.

16 MS. COX: Objection.

17 Is there a question?

18 Q. (By Mr. Cochran) Correct?

19 MR. COCHRAN: I'm trying.

20 MS. COX: It looks like you are arguing with
21 the witness.

22 Q. (By Mr. Cochran) This is not what this says,
23 does it, Officer Bain. It doesn't say that the victim
24 didn't want to be contacted. It just says that Officer
25 Cheney was unable to contact the victim, correct?

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1 A. That's what that says.
 2 Q. Don't you agree that it's unusual that a simple
 3 attempt to contact a victim during the heat of the
 4 moment when probable cause has already been established
 5 according to the Cad Incident Inquiry, that it's unusual
 6 just to release an alleged suspect?
 7 MS. COX: Objection; form.
 8 A. No, it happens more often than you would think.
 9 Q. (By Mr. Cochran) The next portion says, "We
 10 took him out of handcuffs, and he kept arguing and
 11 yelling that we had contacted him because he was black.
 12 He told us we could search his backpack and Officer
 13 Cheney told him that he did not need to search it."
 14 Did I read that correctly?
 15 A. Yes.
 16 Q. Are you testifying that based on your report
 17 that despite the fact that there were concerns about a
 18 black individual who possibly had a knife, that Officer
 19 Cheney told him he didn't need to search his bag?
 20 MS. COX: Objection; form.
 21 Answer if you can.
 22 A. That is exactly what Officer Cheney said at the
 23 time and I documented in my report.
 24 Q. (By Mr. Cochran) Did you agree with Officer
 25 Cheney's decision not to search the backpack of an

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1 Officer Cheney asked him; is that right?
 2 A. That's what I put in my report, yes.
 3 Q. And then it says, "Sergeant Jepson was advised
 4 and said he was responding and advised us to clear the
 5 scene to deescalate the situation."
 6 Did I read that correctly?
 7 A. You did.
 8 Q. Is that the entirety of the report as you
 9 understand it?
 10 A. Yes, it is.
 11 Q. Would you agree with me that there is no
 12 mention whatsoever that Zim Contreraz either slurred his
 13 words, that he was highly intoxicated or that he was
 14 impaired in any way?
 15 A. It was not in the report.
 16 Q. Correct. You didn't write it, did you?
 17 A. I didn't -- I wrote the report.
 18 Q. Right. But you never wrote in your report the
 19 things that you testified to previously, correct?
 20 MS. COX: Objection; form.
 21 A. Just -- just that he have belligerent.
 22 Q. (By Mr. Cochran) Right.
 23 You did not include your testimony that you
 24 could smell alcohol on his breath, right?
 25 A. I did not.

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1 alleged suspect of an intimidation with a weapon?
 2 MS. COX: Objection; form.
 3 A. If we were unable to contact the victim, which
 4 is what Officer Cheney had said, there would be no
 5 reason to search the backpack.
 6 Q. (By Mr. Cochran) What about finding the knife
 7 inside of it? Wouldn't that substantiate the probable
 8 cause that's already been listed as existing in the Cad
 9 Incident Inquiry?
 10 MS. COX: Objection; form.
 11 A. We didn't have -- we didn't have a description
 12 of the knife, like, such as black handle or red handle,
 13 black knife, silver knife.
 14 So just because he had a knife doesn't mean
 15 that that would have been the knife used in the crime.
 16 So it would have not reestablished the probable cause or
 17 even helped the probable cause just because of the fact
 18 he had a knife.
 19 Q. (By Mr. Cochran) The next portion of your
 20 supplemental report written on or about July 12th of
 21 2020, says, "The male then dumped out his backpack.
 22 Officer Cheney asked the male if he would like to talk
 23 to a supervisor about the incident, and he said that he
 24 would."
 25 So he didn't demand to see a supervisor.

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1 Q. You did not include that he was highly
 2 intoxicated, which is what you testified before,
 3 correct?
 4 A. Correct.
 5 Q. None of those things exist within the
 6 contemporaneous report that you say you authored on July
 7 12th of 2020, right?
 8 A. Correct.
 9 MS. COX: Objection; form.
 10 A. Correct.
 11 Q. (By Mr. Cochran) and We've already talked
 12 about the fact that if those are things that you
 13 observed, it was really important for you to include it
 14 in the report, right?
 15 A. We didn't -- we weren't talking about an
 16 Enforcer report then. You were talking about if I would
 17 have relayed those to Sergeant Jepson regarding the use
 18 of force.
 19 You didn't say -- we didn't say put it in the
 20 Enforcer report. So I believe we need to -- we need to
 21 be specific about -- about that.
 22 Q. (By Mr. Cochran) Do you recall me asking about
 23 your training as a DUI officer?
 24 A. Yes.
 25 Q. And your report about -- or your training about

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1 being able to recognize when someone is impaired or
2 under the influence?

3 A. Yes.

4 Q. Okay. You agreed with me, again, based upon
5 past disciplinary action that it's important for you to
6 include as much detail in reports as possible, right?

7 A. Sure.

8 Q. That did not happen in this case, did it?

9 MS. COX: Objection; form.

10 A. I included the -- I documented the things that
11 I felt needed to go in this report. If I left out the
12 fact that he was intoxicated and didn't have anything to
13 do with the crime, but I put down his actions and the
14 fact that he was belligerent. It's not illegal to be
15 intoxicated in public.

16 Q. (By Mr. Cochran) It's not illegal to be
17 belligerent either?

18 A. No, but it goes towards his actions.

19 Q. And it's not illegal to be black hopefully,
20 right?

21 MS. COX: Objection; form.

22 A. Can you rephrase that question, please?

23 Q. (By Mr. Cochran) Yeah. I'm trying to figure
24 out what you decide is important to put in a report and
25 what you decide is not.

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1 recognize but doesn't always need to be included in a
2 report.

3 Q. (By Mr. Cochran) Wait a second. As a person
4 who deals with DUI enforcement, you recognize that
5 people are impaired, but you say that that's not always
6 important to include in your reports?

7 A. Yeah.

8 Q. Officer Bain, are you aware that there were two
9 other people who were on site at the time who say that
10 they witnessed your actions and your interactions with
11 the plaintiff, Mr. Contreraz, in this case?

12 A. Yeah, we discussed that prior.

13 Q. Are you aware that they both have offered up
14 statements, it's in the tort claim form, that they
15 offered up statements that you in fact grabbed
16 Mr. Contreraz, not from his right side but from his left
17 side, that you pulled down on the handcuffs, which sent
18 his whole body back, and he hit his head against the
19 picnic table?

20 MS. COX: Objection.

21 Q. (By Mr. Cochran) Are you aware of that?

22 MS. COX: Objection; form.

23 A. I was not aware of the details, but I was aware
24 that there were some people in the park.

25 Q. (By Mr. Cochran) And you were aware that their

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1 You testified before that you could smell
2 alcohol on him, that his words were all slurred, that
3 his -- I think you used the word fat, but basically he
4 couldn't formulate words?

5 A. I said thick and slurred speech.

6 Q. Thick and slurred speech.

7 You can remember those things as you sit here
8 today?

9 A. Yes.

10 Q. You volunteered those things in testimony. I
11 didn't ask you about that, right?

12 A. Correct.

13 Q. You never put that in your report back on July
14 12th of 2020?

15 A. Correct.

16 MS. COX: Objection; form.

17 A. Correct.

18 Q. (By Mr. Cochran) It was important today now
19 that you are being named in a lawsuit by Mr. Contreraz,
20 but it wasn't important in the report back in July of
21 2020, correct?

22 MS. COX: Objection; form.

23 A. As somebody who specializes in impaired driving
24 and DUI enforcement and recognizes that, it's something
25 that is very evident to me as something that I usually

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1 testimony or at least their recollections are understood
2 to be much different than your recollection of your use
3 of force with Mr. Contreraz, correct?

4 MS. COX: Objection; form.

5 A. Based on what you are telling me, it would
6 appear that they are different recollections of the same
7 event.

8 Q. (By Mr. Cochran) And would you agree with me
9 that the only way that we're going to be able to figure
10 out who is telling the truth is to allow a finder of
11 fact to hear the circumstances and judge credibility as
12 to whether your recollection is correct or whether their
13 recollection is correct?

14 MS. COX: Objection; form.

15 If you can answer.

16 A. Well, even then it's one person's opinion,
17 isn't it?

18 Q. (By Mr. Cochran) Not an opinion but what their
19 recollection is, right?

20 MS. COX: Same objection.

21 A. Well, would you agree that we can have a
22 collision scene and have five witnesses and each of the
23 five people will probably give a different account of
24 what happened but not -- there would be some similar
25 facts but not all the same?

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1 Q. (By Mr. Cochran) I do.

2 A. Okay.

3 Q. And I also agree, and wouldn't you, that that's
4 something that ultimately needs to be decided by a jury?

5 MS. COX: Objection; form.

6 A. Well, you called it a finder -- a finder of
7 fact.

8 Q. (By Mr. Cochran) Correct.

9 A. Okay. But it's still an opinion.

10 Q. Well, would you agree with me that it needs to
11 be decided as to whose credibility is -- the weight of
12 the credibility -- strike that.

13 Would you agree with me that someone needs to
14 hear both versions and decide who they believe is more
15 credible?

16 MS. COX: Objection; form. Continuing
17 objection to this line of questioning regarding legal
18 matters this witness is not qualified to answer.

19 MR. COCHRAN: Noted.

20 Q. (By Mr. Cochran) Go ahead and answer, if you
21 can.

22 A. That's not for me to say or decide. That's for
23 the legal system that this country has created to
24 decide.

25 MS. COX: Further, if I can add, we don't

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1 Go ahead.

2 A. That is correct.

3 MR. COCHRAN: I think that's all the
4 questions I have.

5 MS. TAYLOR: Okay.

6 MS. COX: Thank you.

7 Can we take a break --

8 MR. COCHRAN: Sure.

9 MS. COX: -- and then hopefully we'll cut
10 everybody lose?

11 THE VIDEOGRAPHER: Going off the record at
12 1:41.

13 (Recess was taken from 1:41 p.m. to
14 1:48 p.m.)

15 MS. TAYLOR: And for the record, Jennifer
16 Taylor on behalf of the defendants. We're not going to
17 ask any questions at this time. So we'll reserve
18 signature, and we'll take a copy, an E-Tran, please.

19 THE COURT REPORTER: And do you want to
20 order?

21 MR. COCHRAN: I will order, please.

22 (Deposition concluded at 1:48 p.m.)

23 (By agreement between counsel and witness,
24 signature was reserved.)
25 * * * * *

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1 have a statement from Chrissie Wade. You said both
2 witnesses. There's only one from Seth. So if you have
3 two, we would like that to be provided.

4 MR. COCHRAN: That's a nice statement.

5 Q. (By Mr. Cochran) Are you aware that at least
6 so far no other responding Tacoma police officer has any
7 recollection of this event?

8 MS. COX: Object --

9 A. Go ahead.

10 MS. COX: Was that you --

11 THE WITNESS: That was me.

12 MS. COX: Objection; form.

13 THE WITNESS: I haven't talked to any
14 officers on the recollection of this event.

15 Q. (By Mr. Cochran) Does that include Erik
16 Levitt?

17 MS. COX: Same objection.

18 A. That is correct.

19 Q. (By Mr. Cochran) Does that include Officer
20 Branham?

21 MS. COX: Same objection.

22 A. That is correct.

23 Q. (By Mr. Cochran) How about Officer Franco?

24 MS. COX: Continuing objection same line of
25 questions.

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1 C E R T I F I C A T E

2
3 STATE OF WASHINGTON
4 COUNTY OF KING

5
6 I, Barbara K. Castrow, a Certified Court Reporter
7 in and for the State of Washington, do hereby certify
8 that the foregoing transcript of the deposition of
9 Officer Christopher Bain, having been duly sworn, on
10 November 14, 2023, is true and accurate to the best of
11 my knowledge, skill and ability.

12 IN WITNESS WHEREOF, I have hereunto set my hand
13 and seal this 28th day of November, 2023.
14

15
16 *Barbara Castrow*

17 Barbara K. Castrow, CCR, RMR, CRR
18 Certified Court Reporter #2395

19
20 My certification expires:
November 24, 2024

